

# COMMISSION ON WARTIME CONTRACTING: INTERIM FINDINGS AND PATH FORWARD

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## HEARING

BEFORE THE  
SUBCOMMITTEE ON NATIONAL SECURITY  
AND FOREIGN AFFAIRS  
OF THE  
COMMITTEE ON OVERSIGHT  
AND GOVERNMENT REFORM  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

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## COMMISSION ON WARTIME CONTRACTING: INTERIM FINDINGS AND PATH FORWARD

WEDNESDAY, JUNE 10, 2009

HOUSE OF REPRESENTATIVES,  
SUBCOMMITTEE ON NATIONAL SECURITY AND FOREIGN  
AFFAIRS,  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM,  
*Washington, DC.*

The subcommittee met, pursuant to notice, at 10 a.m., in room 2154, Rayburn House Office Building, Hon. John F. Tierney (chairman of the subcommittee) presiding.

Present: Representatives Tierney, Flake, Foster, Lynch, Quigley, and Duncan.

Staff present: Catherine Ribeiro, Mariana Osorio, and Cal Garner, staff members; Anne Bodine and Brendan Culley, fellows; Andy Wright, staff director; Elliot Gillerman, clerk; Scott Linday, counsel; Adam Hodge, deputy press secretary; Jennifer Safavian, minority chief counsel for oversight and investigations; Dan Blankenburg, minority director of outreach and senior advisor; Adam Fromm, minority chief clerk and Member liaison; Tom Alexander and Stephen Castor, minority senior counsels; Ashley Callen, minority counsel; Dr. Christopher Bright, minority senior professional staff member; and Glenn Sanders, minority Defense fellow.

Mr. TIERNEY. A quorum being present, the Subcommittee on National Security and Foreign Affairs hearing entitled, "Commission on Wartime Contracting: Interim Findings and Path Forward," will come to order.

I ask unanimous consent that only the chairman and ranking member of the subcommittee be allowed to make opening statements. Without objection, so ordered.

I ask unanimous consent that the hearing record be kept open for 5 business days so that all members of the subcommittee will be allowed to submit a written statement for the record. Without objection, so ordered.

Good morning. I want to thank all of you for being with us here today. As I promised you, you are there, and I am here, but I did have to restrain Mr. Shays from trying to get into the big chair. [Laughter.]

So today the Subcommittee on National Security and Foreign Affairs is going to continue its oversight of defense spending issues with a hearing to discuss what has become an all too familiar issue in recent years, waste, fraud, abuse, and a lack of accountability in wartime contracting in both Iraq and Afghanistan.

With hundreds of billions of dollars of U.S. taxpayer dollars invested in these two theaters since 2001, and more to come, it is critical that we continue to strengthen our oversight of the contracting in these areas.

Now, before I begin my substantive remarks, I just want to address a procedural issue for the benefit of our subcommittee members and the public. We did have an arrangement with the Commission earlier on that we would have the report released to us and not by the press until the evening of this hearing, or on the hearing. That didn't occur. As I apologize to the other Members on that, we are about to find out why it is that didn't occur. On that basis, we wanted to give the Members an opportunity to be prepared to ask questions of the committee and to work on that. So, we are going to find out what happened there, and do that. I still suspect that Members have had an opportunity to prepare themselves notwithstanding.

The U.S. reliance on contractors has reached unprecedented levels over the last 8 years, reaching upwards of a quarter of a million contractors on the ground in Iraq and Afghanistan from the Department of Defense alone. That doesn't even include those that are working for the Department of State in the U.S. Agency for International Development, or other agencies.

It is an extraordinary number by all accounts of civilian contractors in a combat environment. Unfortunately, while numbers of contracted personnel and related expenditures has ballooned, the opposite trend occurred with respect to oversight.

The U.S. National Security departments allowed their program oversight staff and expertise to dwindle to the point that in many circumstances contractors have been hired to oversee other contractors' work. Report after report have identified the acute need to rebuild executive branch oversight capacity, but as yet we have seen little to show for it.

We need to fix our broken contracting and oversight function in the executive branch and add to it a proper mix of oversight from independent sources and from Congress. In that light, the creation of the Commission on Wartime Contracting in 2008 was the product of efforts by several of us in Congress dating back to 2005.

At that time, it became clear to us that we needed an entity that could provide sustained oversight of wartime contracts similar to the efforts of the Truman committee during the 1940's. Waste, fraud, and abuse of wartime contracts transcends politics. Oversight should not be the luxury of a divided government and languish when congressional majorities and the President share a common political party.

We saw the disastrous result of that approach as we initiated and prosecuted action in Iraq. I have high expectations for what the Commission on Wartime Contracting can accomplish, and we are here this morning to assess its progress to date. The Commission's Interim Report highlights a number of issues related to management and accountability, logistics, security, and reconstruction efforts in Iraq and Afghanistan.

One interesting case described in the report shows the costly construction of a duplicative dining facility at the cost of \$30 million. And that is certainly representative of such issues, but it is also

important that the Commission break new ground. There is no sense in creating an oversight entity that merely duplicates the work that is going on by Inspectors General, or the Government Accountability Office. We already received those reports, although we do expect that you will review those, and synthesize them, and use them to inform your work.

I look forward to hearing what the commissioners find out that we don't already know about. In short, I expect that our witnesses this morning will ensure us that the investment in their activities was a worthwhile decision.

We, in Congress, as the sponsors of the Commission, need to hear about any challenges or hindrances the Commission faces in conducting its work. For example, I am concerned that the Commission will not be able to fulfill its mandate without a semi-permanent presence in theater. And, perhaps, we will hear a little bit about that today.

I would note that according to the report, the Commissioner has only taken two trips to date to Iraq and Afghanistan. I am also concerned that the current 1-year mandate of the Commission might allow responsible government officials and culpable contractors to sort of wait it out.

The Commission's charge is too important to suffer defeat at the hands of obstruction or delay, and I don't want to see a lack of subpoena power to deter the Commission from going after recalcitrant parties, if that is a problem. This subcommittee stands ready to assist the Commission in regard to whatever is appropriate in conducting their official duties.

The dynamic in Iraq and Afghanistan is changing significantly, specifically as we are moving to drawdown activities in Iraq while at the same time increasing resources in Afghanistan. Within this frame work, we must look at the mistakes of our hurried decision-making with respect to contracts in Iraq and avoid a repeat of those mistakes in Afghanistan. As we said before, lessons learned must be lessons followed. We will need every bit of experience, judgment, and resolve at our disposal to get this right.

As such, it is imperative that the Commission has every opportunity and capacity to perform its work without hindrance. So, I want to take this opportunity to thank the Commissioners, the four that are here, and the rest of your members, if you would be good enough to exchange that with them, and the staff, for undertaking this critical public service assignment.

Over a month ago, when I appeared before the Commission at its first hearing, hosted by the House of Representatives, we noted that we would be looking forward to this date when we would switch seats and have the opportunity to hear from you on your progress. Done right, your help will safeguard the lives of our civilian and military personnel in Iraq and Afghanistan. Done right, your work will help rebuild the trust of the U.S. taxpayers to put in their government to wisely spend their dollars under difficult circumstances. Those twin goals—benefiting our people in harm's way and rebuilding the trust of those here at home—represent the bedrock intention behind the creation of the Commission.

So, thank you for being here. At this point, I defer to Mr. Flake for his opening remarks.  
[The prepared statement of Hon. John F. Tierney follows:]

Committee on Oversight and Government Reform

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Tuesday, June 09, 2009  
Defense and Security

## Hearing on Commission on Wartime Contracting: Interim Findings and Path Forward

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Overview  
Opening Statement of Chairman John F. Tierney

June 9, 2009  
**NATIONAL SECURITY SUBCOMMITTEE HEARING**  
"Commission on Wartime Contracting: Interim Findings and Path Forward"

WASHINGTON, DC -- On Wednesday, June 10, 2009, the Subcommittee on National Security and Foreign Affairs continued its oversight of defense spending issues with a hearing to discuss the Wartime Contracting Commission's interim findings on government contract practices in Iraq and Afghanistan. The Commission's interim report was released in conjunction with this hearing. A final report is due to Congress in 2010.

**WITNESS LIST:** This hearing featured two panels of witnesses, the first represented by the Commission Co-chairs and two additional Commissioners, who served as subject matter experts. The second panel featured an outside expert on defense contracting.

**Panel I:**

- Michael J. Thibault is a Commissioner and Co-Chair, Commission on Wartime Contracting. Thibault was appointed to the Commission by Senate Majority Leader Harry Reid and Speaker of the House Nancy Pelosi. He is a former Deputy Director of Defense Contract Audit Agency.
- Christopher Shays is a Commissioner and Co-Chair, Commission on Wartime Contracting. He was appointed to the Commission by House Minority Leader John Boehner. Previously, Shays represented Connecticut's fourth congressional district in the House of Representatives from 1987 to 2009 and served as Ranking Member to this Subcommittee and Chair of its predecessor.
- Charles Tiefer is a Commissioner, Commission on Wartime Contracting. Commissioner Tiefer is a professor at the University of Baltimore School of Law. He has served as legal counsel in both the House and Senate, and has written several books, including a text on government contracts.
- Grant S. Green is a Commissioner, Commission on Wartime Contracting. Commissioner Green is a former Under Secretary of State for Management and Assistant Secretary of Defense. A retired Army colonel, he has also served in corporate-executive and director positions.

**Panel II:**




- Mr. Alan Chvotkin, Executive Vice President & Counsel, Professional Services Council; former Vice President, AT&T Government Services.

To view a webcast of the hearing, click on the link below:

[Click Here](#)

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**Documents and Links**

-  [Joint Statement of CWC Commissioners \(261 KB\)](#)
-  [Statement of Mr. Alan Chvotkin \(171 KB\)](#)
-  [Commission on Wartime Contracting in Iraq and Afghanistan Interim Report - June 2009](#)

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Mr. FLAKE. I thank the chairman. I am pleased to be here, pleased to hear from the testimony, particularly from former Congressman Shays. I know that he traveled to Iraq and Afghanistan a couple of times, right, more than a few. And I just am pleased that we are doing more oversight here. Obviously, there is never too much oversight that can be done, and in particular in this area.

The U.S. Military Base budget for the current fiscal year is more than \$500 billion. Congress has appropriated roughly \$830 billion for the wars in Afghanistan and Iraq. I can commiserate with the Commission on how tough it has to be to get access to information that you need to do your work. I have been waiting for more than 2 months for competitive bidding information just on a small subset of 2008 defense contracts. Details appear to be shrouded in mystery here.

In fact, I look forward to the possibility of having someone who is knowledgeable about the Pentagon's contracting process appear under oath so that we can get answers to some of these questions that we have wanted answers to for a long time on the competitive bidding process. And to that end, I look forward to the witnesses' testimony, and thank the chairman again for holding this hearing.

Mr. TIERNEY. Thank you, Mr. Flake.

So now the subcommittee will receive testimony from the witnesses on our first panel. And I would first like to introduce you, if I may, Mr. Shays.

Let me introduce the panel, if I could. I understand you are going to deliver the remarks, is that what you are signaling?

[Remarks off mic.]

Mr. TIERNEY. Oh, I will. I definitely will. [Laughter.]

It never goes away, does it, Chris? [Laughter.]

When Chris was in there, and he used to sit here, he would always be buzzing over, sharing, so it is good. [Laughter.]

Mr. Michael J. Thibault serves as the Commission's co-chair and was appointed by House Speaker Nancy Pelosi and Senate Majority Leader Harry Reid.

From 2007 to 2008, Mr. Thibault worked as the director of Navigant Consulting. And prior to that, he was the chief compliance officer at Unisys Federal Systems.

Mr. Thibault also previously served as the Deputy Director of the Defense Contract Audit Agency, where he worked from 1973 to 2005. Mr. Thibault holds a B.A. from Southern Oregon University, and a Masters of Art from Central Michigan University. Thank you, sir.

The Honorable Christopher H. Shays also serves as co-chair of the Commission on Wartime Contracting and was appointed by House Minority Leader John Boehner.

From 1987 to 2009, Mr. Shays served in the U.S. House of Representatives, where he represented the 4th District in Connecticut.

During his time in Congress, Mr. Shays served as ranking member of the Subcommittee on National Security and Foreign Affairs, as well as chairman of its predecessor committee.

Mr. Shays holds a Bachelor of Arts from Principia College, as well as an M.B.A. and an M.P.A. from New York University.

Mr. Charles Tiefer serves as a member of the Commission on Wartime Contracting and was appointed by Senate Majority Lead-

er Harry Reid. He is a professor at the University of Baltimore School of Law, where he specializes in government contracts and contract legislation.

From 1993 to 1994, Mr. Tiefer served as acting general counsel in the House of Representatives.

From 1984 to 1995, he was the solicitor and deputy general counsel in the U.S. Senate.

Mr. Tiefer holds a Bachelor of Arts from Columbia University and a J.D. from Harvard Law School.

Colonel Grant S. Green is a member of the Commission on War-time Contracting and was appointed by President George W. Bush. He currently serves as the chairman of Global Marketing and Development Solutions, Inc. He has held a number of senior positions in the government, including Under Secretary of State for Management, Assistant Secretary of Defense, and Executive Secretary for the National Security Council.

Colonel Green is retired from the U.S. Army and previously served on the Commission as an acting Co-Chair. He holds a Bachelor of Arts from the University of Arkansas and an M.S. from George Washington University.

So, thank you all for making yourselves available to testify here today and for the work that you are doing on the Commission, as well as your substantial expertise.

And now, it is the policy of this subcommittee to swear in the witnesses, so if you would kindly stand and raise your right hands. If there are any persons that are going to be sharing testimony with you today, you might ask them to stand as well.

[Witnesses sworn.]

Mr. TIERNEY. Thank you. The record will please reflect that all of the witnesses answered in the affirmative.

As all of you know, already, your written testimony will be placed on the record and accepted by the committee. At this time, we would like to give you the opportunity to make opening remarks for a 5-minute period. And it will be followed by questions and answers. So, Mr. Thibault, if you care to start.

**STATEMENT OF MICHAEL J. THIBAUT, COMMISSIONER AND CO-CHAIR, COMMISSION ON WARTIME CONTRACTING, ACCOMPANIED BY HON. CHRISTOPHER SHAYS, COMMISSIONER AND CO-CHAIR, COMMISSION ON WARTIME CONTRACTING; CHARLES TIEFER, COMMISSIONER, COMMISSION ON WARTIME CONTRACTING; AND COLONEL GRANT S. GREEN, COMMISSIONER, COMMISSION ON WARTIME CONTRACTING**

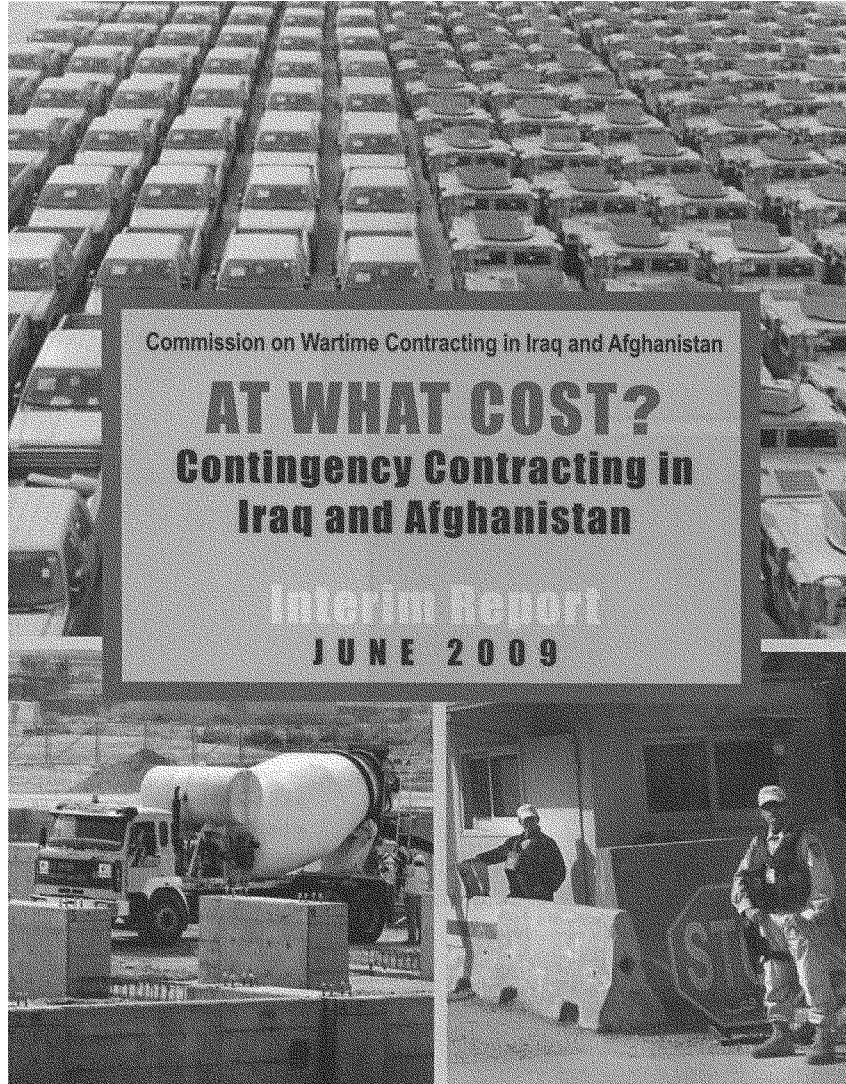
Mr. THIBAUT. Thank you, Mr. Chairman, ranking member, and members of the subcommittee. Thank you for inviting us to speak with you today about our Interim Report. We will keep our opening statements brief to allow maximum time for discussions and questions.

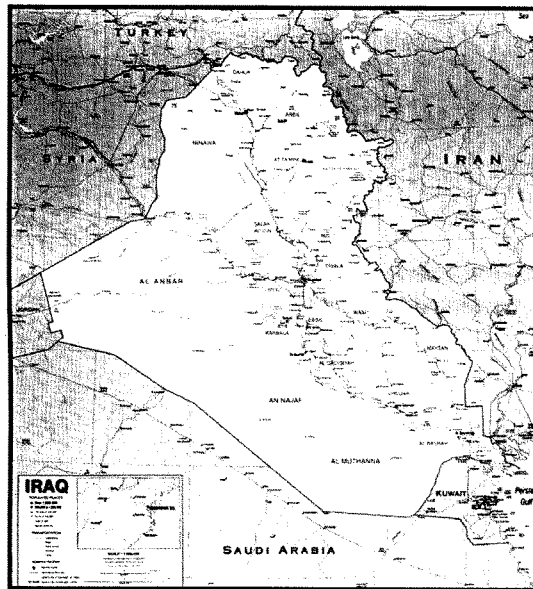
The Commission has four other members. They are Clark Ervin, Linda Gustitus, Robert Henke, and Dov Sakheim.



The precipitating event for Chairman Tierney's inviting us here today is the official release of the interim report to Congress entitled, "At What Cost? Contingency Contracting in Iraq and Afghanistan."

[The information referred to follows:]





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## COVER PHOTOS

Clockwise from top: Vehicles  
at a U.S. base (Army Corps  
of Engineers photo); base  
security guards (Commission  
photo); construction project  
in Iraq (Commission photo).

**At What Cost?**  
**Contingency Contracting**  
**In Iraq and Afghanistan**

**Interim Report to Congress**

Commission on Wartime Contracting  
In Iraq and Afghanistan

JUNE 2009

## Acronyms

CENTCOM	U.S. Army Central Command
CERP	The Commander's Emergency Response Program
COR	Contracting Officer's Representative
DAU	Defense Acquisition University
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
DFAC	Dining Facility
DFARS	Defense Federal Acquisition Regulation Supplement
DoD	Department of Defense
DoDIG	Department of Defense Inspector General
DoS	Department of State
FAR	Federal Acquisition Regulation
FOB	Forward Operating Base
FPDS-NG	Federal Procurement Data System - Next Generation
GAO	Government Accountability Office
IDIQ	Indefinite Delivery Indefinite Quantity
JCC-I/A	Joint Contracting Command - Iraq/Afghanistan
LOGCAP	Logistics Civil Augmentation Program
MEJA	Military Extraterritorial Jurisdiction Act
MNC-I	Multi-National Corps - Iraq
MNF-I	Multi-National Force - Iraq
PRT	Provincial Reconstruction Team
PSC	Private Security Contractor
QAR	Quality Assurance Representative
SIGAR	Special Inspector General for Afghanistan Reconstruction
SIGIR	Special Inspector General for Iraq Reconstruction
SPOT	Synchronized Pre-deployment and Operational Tracker
USACE	U.S. Army Corps of Engineers
USAID	U.S. Agency for International Development

## Preface

In 2008 Congress established the Commission on Wartime Contracting in Iraq and Afghanistan in response to increasing indications of widespread waste, fraud, and abuse in government contracting. The eight-member Commission is a bipartisan, independent entity charged with evaluating and reporting on America's wartime contracting for logistics, reconstruction, and security.

The authorizing legislation directs the Commission to issue an Interim Report and a Final Report. This Interim Report to Congress describes the Commission's work to date, which includes hundreds of meetings and briefings, analysis of existing reports and audits, hearings on Capitol Hill, and fact-finding trips to the theaters of operation. This Report highlights some time-sensitive issues, especially given the challenges of the drawdown in Iraq and the buildup in Afghanistan.

The Commission's Final Report to Congress will reflect the results of all of the Commission's work. It will include lessons learned and specific, actionable recommendations for permanent improvement in wartime contracting.

More than 240,000 contractor employees currently provide critical support for U.S. contingency operations in the Southwest Asia area of responsibility, which includes Iraq and Afghanistan. Despite the difficulty of operating in these environments, military personnel, federal civilian employees, and private contractors have executed countless support tasks faithfully and well.

Many have paid a personal price. As of May 27, 2009, 4,973 men and women of America's military and at least 13 civilian employees of the Department of Defense have died in Iraq and Afghanistan. Less publicized is the fact that more than 1,360 contractor employees—Americans, Iraqis, and third-country nationals—have also died in the two war zones. Tens of thousands more have been wounded. Criticisms of the contingency-contract system and suggestions for reform in no way diminish their sacrifices.

The Commission on Wartime Contracting in Iraq and Afghanistan is committed to help ensure that contract support for future contingency operations is well planned, efficiently executed, and rigorously overseen so that it best supports America's military, diplomatic, and reconstruction efforts, and provides good stewardship of American taxpayers' dollars.

Michael J. Thibault, Co-Chair      Christopher H. Shays, Co-Chair

Clark Kent Ervin      Grant S. Green      Linda J. Gustitus

Robert J. Henke      Charles Tiefer      Dov S. Zakheim

*Robert B. Dickson, Executive Director*



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## Executive Summary

Since 2001, Congress has appropriated about \$830 billion to fund U.S. operations in Iraq and Afghanistan. Over that period, America's reliance on contractors has grown to unprecedented proportions to support logistics, security, and reconstruction efforts related to those operations. More than 240,000 contractor employees—about 80 percent of them foreign nationals—now work in Iraq and Afghanistan, supporting the Department of Defense. Additional contractor employees support the Department of State and the U.S. Agency for International Development.

Contract employees manage dining facilities, wash uniforms, guard military bases, protect diplomats, transport supplies, and build everything from water-treatment plants to hospitals. Contractors are doing vital work, generally to good effect, but the sheer scale of their operations and weaknesses in the federal contract-management and oversight systems create plentiful opportunities for waste, fraud, and abuse.

The Commission will address nine focus areas in preparation of its Final Report. While these may be some of the most intractable issues, if successfully addressed they hold the greatest promise for significant reform in contingency contracting. They are:

- leadership, culture, and accountability within the key agencies responsible for contingency operations;
- staffing and training of the federal acquisition workforce;
- pre-deployment planning for contractor support and integration;
- policies related to inherently governmental functions;
- the process for defining contract requirements;
- contract pricing and competition;
- contractor performance and cost effectiveness;
- visibility into and accountability of subcontractors—in particular, foreign subcontractors; and
- the Iraq drawdown and the Afghanistan buildup.

This Interim Report to Congress addresses problems in our system of framing, managing, and overseeing contracts that support American military, diplomatic, and reconstruction activities. Some of these problems, noted below as “Issues of Immediate Concern,” require prompt attention as well as systematic study and ultimately recommendations for statutory, regulatory, or organizational change.

The report reviews long-standing issues such as shortages of trained acquisition personnel that still plague U.S. operations. It also addresses the heavy reliance on foreign subcontractors who may not be accountable to any American governmental

## AT WHAT COST?

authority. It calls attention to new concerns such as the implications of hiring foreign contract workers to guard U.S. military bases. And it takes note of the inadequate plans and resources available to manage an enormous task of shipping property back to the United States or to other areas of U.S. operations, transferring it to the Iraqi government, or disposing of it as we leave Iraq and bolster operations in Afghanistan.

**ISSUES EXAMINED IN THE INTERIM REPORT**

The body of this Interim Report is organized into five chapters. The first, Management and Accountability, offers essential background on the government's use of contingency contractors and examines high-level, overarching issues of contract management, accountability, policy, and process that permeate the succeeding narratives. Chapters 2, 3, and 4 cover the major functional areas of the Commission's work: Logistics, Security, and Reconstruction. Each chapter lays out the work to date and the items on the agenda for the Commission's future work. The concluding chapter, On the Agenda, gathers the projected lines of investigation from each of the preceding chapters to outline an integrated framework for our path forward.

The chapters describe current knowledge and the results of fact-finding work. They review incidents, diagnose problems, and identify points for future inquiry and analysis. Some of the key issues discussed in these chapters include:

***Management and Accountability***

- Neither the military nor the federal civilian acquisition workforces have expanded to keep pace with recent years' enormous growth in the number and value of contingency contracts.
- Contracting agencies must provide better and more timely training for employees who manage contracts and oversee contractors' performance. In particular, members of the military assigned to perform on-site performance oversight as contracting officer's representatives often do not learn of the assignment until their unit arrives in theater, and then find insufficient time and Internet access to complete necessary training.
- Contract auditors are not employed effectively in contingency contracting.
- Contracting officials make ineffective use of contract withhold provisions recommended by their auditors, and many contract audit findings and recommendations are not properly resolved.
- The government still lacks clear standards and policy on inherently governmental functions. This shortcoming has immediate salience given the decisions to use contractors in armed-security and life-support tasks for military units.

## EXECUTIVE SUMMARY

*Logistics*

- Contractors provide critical support to U.S. military personnel in Iraq and Afghanistan, yet the Department of Defense cannot provide a complete accounting of all the contracted support it relies upon. The absence of definitive information affects commanders' ability to understand and make best use of the support they receive, and impedes policy makers' ability to address the appropriate balance between contractors and military personnel.
- The Department of Defense has failed to provide enough staff to perform adequate contract oversight. Inadequate oversight, poorly written statements of work, lack of competition, and contractor inefficiencies have contributed to billions of dollars in wasteful spending in the Army's largest contract for support services, the Logistics Civil Augmentation Program or LOGCAP contract.
- Contractors are playing a key role in the drawdown of U.S. military forces in Iraq. As military units withdraw from bases, the number of contractor employees needed to handle closing or transfer tasks and to dispose of government property will increase. Strong government oversight will be required, but preparations for this major shift out of Iraq and into Afghanistan or other areas are sketchy.

*Security*

- The Rules of Engagement for the military differ significantly from the Rules for the Use of Force for private security contractors. The Rules for the Use of Force for private security contractors guarding forward operating bases may not adequately protect military personnel.
- Documented problems with the selection, training, equipping, arming, performance, and accountability of private security-contractor employees will require policy and regulatory changes to provide more effective oversight.

*Reconstruction*

- Attempts to achieve unity of effort and more measurable results are hampered by weaknesses in the planning, organizing, coordinating, and oversight of reconstruction and development projects.
- Reconstruction, stabilization, and development activities in contingency-operation zones can involve numerous government agencies, private-sector, and nongovernmental organizations. Yet there is no locus of planning, coordination, and information—a situation that undermines the goals of the total effort, and one that should be corrected.
- The lack of coordination between USAID projects and the Department of Defense's Commander's Emergency Response Program funded projects is a serious problem that needs to be addressed to maximize capacity building and avoid cross-purpose efforts.

## THE COMMISSION'S MANDATE

The Commission is investigating contingency contracting in a wartime environment.<sup>1</sup> Reliance on contingency contractors has grown for several reasons, including:

- the ease of engaging contractors rather than hiring new federal civilian employees,
- post-Cold War reductions in military personnel,
- federal civilian work force not keeping pace with demands,
- lack of adequate planning for extended contingency operations, and
- unplanned and untimely budgeting.

The combination of this growing reliance with a mixture of hasty decisions, lack of planning, day-to-day exigencies, and other factors—especially long-standing problems in staffing and training the federal civilian and military workforces that perform the work, as well as manage and audit contracts—has stressed our system of wartime contracting and generated widespread criticism. That is why Congress created the Commission.

In 2008, Congress established the Commission on Wartime Contracting in Iraq and Afghanistan. Lawmakers designed the Commission as an independent, bipartisan panel to assess a range of issues related to wartime contracting, including the extent of waste, fraud, abuse, and mismanagement of wartime contracts in Iraq and Afghanistan, and to make recommendations concerning contracting for reconstruction, logistical support, and security functions. Details from the authorizing language, Section 841 of Public Law 110-181, appear in an appendix to this Report.

Part of the Commission's mandate is to survey and assess—but not re-create—the work of others who have examined contracting issues. These include the Government Accountability Office, the Congressional Research Service, the Commission on Army Acquisition and Program Management in Expeditionary Operations (better known as the Gansler Commission), and academic and non-governmental organizations.

Another, especially important resource is the work of the Special Inspector General for Iraq Reconstruction, the Special Inspector General for Afghanistan Reconstruction, and

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<sup>1</sup> As stated in 10 U.S.C. § 101(a)(13), the term contingency operation means “a military operation that – (A) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (B) results in the call or order to, or retention on, active duty of members of the uniformed services under [other portions of this title] ... or any other provision of law during a war or during a national emergency declared by the President or Congress.”

## EXECUTIVE SUMMARY

the Inspectors General for the Department of Defense, the Department of State, and the U.S. Agency for International Development. Their investigations have been a vital input to this Commission's work. We will continue to monitor their reports and maintain our professional contacts with them. We are determined to capture the lessons of their valuable work in our Final Report to Congress and ensure that their recommendations are not overlooked or lost.

**ISSUES OF IMMEDIATE CONCERN**

Many issues appear in this Report. Some are already well defined and are receiving close attention for research and evaluation. Others—as previewed in Chapter 5, On the Agenda—have been flagged for scrutiny as the Commission proceeds on its work plan toward the Final Report to Congress.

We believe some issues, however, should not wait for complete analysis in our Final Report. Evidence already in hand makes it clear some issues of immediate concern require prompt action to avoid further undermining U.S. objectives and wasting more taxpayer money:

- The drawdown of U.S. forces in Iraq risks incurring enormous waste, which could range from completion of work that may not need to be done, to poorly controlled handling and disposition of U.S. government property.
- There is a critical shortage of qualified contract-management personnel in theater and those that are there are stretched too thin. In particular, the process for designating and training contracting officer's representatives to check contractor performance in theater is broken.
- The benefits of competition are not being fully realized because of the slow pace of the transition from LOGCAP III to the more competitive LOGCAP IV logistics support contract.
- Too many contractor business systems are inadequate and must be fixed.
- There is a need for greater accountability in the use of subcontractors. Subcontracts account for about 70 percent of the work, but government has very little visibility into their operations.
- The effectiveness of contractor support of expanded U.S. operations in Afghanistan is compromised by the failure to extract and apply lessons learned from Iraq, particularly those about poor coordination among agencies.
- The Department of Defense should accelerate its plans to establish a contracting command in Afghanistan. The troop surge in Afghanistan demands that contracting oversight be conducted in-country rather than from Iraq, which is currently the case.
- The Department of Defense should take immediate steps to ensure that contractors providing security for our operating bases are well trained and equipped to provide strong force protection to our military.

## CONCLUSION

This Interim Report is a snapshot of work in progress. In the months ahead, we will hold additional meetings with representatives of federal agencies, military, contractors, non-governmental organizations, and others, including scholars. We will conduct additional hearings, make additional trips to the theaters of operation, gather more information in stateside meetings with stakeholders, and further develop research strategies. When our investigations uncover possible violations of law or regulation, we will make additional referrals to law-enforcement and administrative officials.

Our aim is to diagnose specific problems, uncover systemic causes, and produce actionable recommendations for reform in our Final Report to Congress. Current projects may change to adapt to new findings or new developments, and new tasks will no doubt emerge. Throughout that process, we will be guided by our statutory mandate and by our professional determination to provide a roadmap for reforms that will assist our government and military to manage contingency operations.

We will also remember hindsight has 20/20 vision, and meticulous evaluations of past events can overlook the fog and friction that always mark combat operations. While we shine light on governmental and industry shortcomings to ready ourselves for our country's next engagement, we honor the efforts—at times heroic—of all those who provide support to the warfighters and government employees who carry out America's missions.



## Chapter 1

# Management and Accountability

During the past several months the Commission asked the federal acquisition community several fundamental contingency-contract management questions.

- Why did the contingency-contract management process used in Southwest Asia permit so many performance problems?
- Why have these long-standing problems not been fixed?
- Why have resources not been made available to adequately staff the acquisition workforce?
- Why is the contingency workforce not getting proper training?

The answers are complicated and interrelated:

- Strategic planning is lacking;
- Speed during contingency contracting takes priority over precision;
- Performance incentives are inadequate or counterproductive;
- Force-structure ceilings are imposed;
- Agency cultures fail to adapt; and
- Policy and budget decisions drive unintended consequences.

These issues are well documented, but the dilemmas they represent are also deeply rooted and resistant to change. The Commission is focusing on the root causes of these long-standing problems and on identifying methods to overcome barriers to improvement. We are analyzing the potential obstacles to successful adoption of previous audit-report recommendations, and are applying this insight to develop specific improvements and an actionable implementation plan.

Recurring management themes resonate through all phases of contingency contracting. Acquisition managers will recognize that these themes align closely with the essential management cornerstones that the Government Accountability Office identified in its *Framework for Assessing the Acquisition Function at Federal Agencies*.<sup>2</sup> These themes include:

- human capital management,
- knowledge and information systems execution,
- policy and process implementation, and

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<sup>2</sup> GAO Report 05-218G, *Framework for Assessing the Acquisition Function at Federal Agencies*, September 2005.



## CHAPTER 1

- organizational leadership and alignment.

The Commission's work also includes an in-depth examination of contractor accountability, so we will address a fifth management cornerstone (one originally included in a draft version of the *Framework*): financial accountability.

This chapter explores elements of these five cross-cutting management themes. Succeeding chapters elaborate on some specific challenges within the context of the Commission's three functional contingency-contracting areas: Logistics, Security, and Reconstruction.

## HUMAN CAPITAL

Comprehensive human-capital management lies at the heart of effective contract management. It demands a strategic, integrated approach to recruitment, training, development, and retention of the acquisition workforce. Agencies often must revise and implement appropriate doctrine and personnel policy to accomplish the goals of a strategic human-capital plan and align resources to mission requirements.

From fiscal years (FY) 2001 through 2008, the Defense Department's reported obligations on all contracts for services, measured in real-dollar terms, more than doubled—from roughly \$92 billion to slightly over \$200 billion. In fiscal year 2008, this figure included more than \$25 billion for services to support contingency operations in Iraq and Afghanistan.<sup>3</sup> These figures do not include State and U.S. Agency for International Development (USAID) contracts. While the numbers and value of service contracts in Iraq and Afghanistan have risen dramatically, agencies have not increased the trained and skilled acquisition workforce in numbers sufficient to ensure that contractors are performing as required.

### *The Contingency Contracting Workforce Remains Understaffed*

Understaffing is one of the most critical barriers to effective contract management. The shortage of properly trained acquisition professionals is evident in all phases of the acquisition process—from requirements generation to post-award execution and contract close-out. Understaffing affects other areas as well. Leadership seeks alternative solutions, and the path of least resistance has resulted in hiring contractors to fill the staffing void. This response to understaffing puts contractors in a position to potentially perform inherently governmental actions.

In May 2009, the Secretary of Defense announced a plan to bolster the acquisition

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<sup>3</sup> GAO Testimony before the Defense Acquisition Reform Panel, Committee on Armed Services, U.S. House of Representatives, 09-643T, Defense Acquisitions: Actions Needed to Ensure Value for Service Contracts, April 23, 2009, 1.

## MANAGEMENT AND ACCOUNTABILITY

workforce by reducing staffing shortages. Under the fiscal 2010 budget request, the department would begin reducing its reliance on support-service contractors by replacing contractor personnel with approximately 13,800 government employees. By 2015, the acquisition workforce would grow by about 20,000.<sup>4</sup> This plan begins a fundamental overhaul of DoD's approach to contract management and will reduce some of the understaffing shortages in order to improve support to the contingency-contracting mission.

### ***Contracting Officer's Representatives***

Contracting officer's representatives (CORs) are important members of the acquisition workforce—perhaps especially important in a contingency environment, where the risk of failure has great consequences. CORs are appointed in writing by a contracting officer to perform a number of contract administration and oversight duties. They generally perform their contractor oversight role in addition to their primary job responsibilities. During Commission interviews with CORs in Iraq and Afghanistan, several CORs expressed concerns about the lack of sufficient time to properly oversee contractor performance. They recognize that monitoring a contractor's technical performance is one of the most important aspects of contract management. But so long as their performance is evaluated on their primary job responsibilities, their added COR responsibilities will always be considered a secondary priority.

#### **Cracks in Kabul**

During its April 2009 trip to theater, the Commission toured the New Kabul Compound, soon to be U.S. Forces Afghanistan headquarters. We observed structural cracks, improper plumbing (and thus unusable bathrooms), an incorrectly sized sewage system, broken and leaking pipes, sinking sidewalks, and other construction defects.

The Army should not have accepted a building in such condition. At the Commission's request, the DoDIG agreed to perform a quick review of the situation. The resulting lessons learned could help preclude future shortcomings in contract oversight and hold contractors to a higher standard of accountability.

Simple and complex service contracts demand different levels of COR commitment. For example, a service contract with a short duration, a single service requirement, and low dollar value may need no COR oversight. However, a high-dollar-value contract with a broad scope of work requiring scientific or technical expertise where the risk of performance is high may require a full-time COR. Every complex service contract

<sup>4</sup> DoD Office of the Assistant Secretary of Defense (Public Affairs) News Release, DoD Releases Fiscal 2010 Budget Proposal, May 7, 2009.

requires a devoted COR.

Despite the acquisition communities' shared recognition of the importance of CORs in the contract-management process, there are often inadequate numbers of qualified CORs assigned to contractor oversight in Iraq and Afghanistan. There is a general lack of COR training, insufficient time for military CORs to perform duties, and improper alignment of COR skills to the types of service contracts they are required to monitor.

Improper contract oversight has been repeatedly documented in past audit reports, inspections, and testimony. In the Comptroller General's January 2008 testimony before the U.S. House of Representatives Committee on Armed Services, he specifically linked contractors' poor service-contract performance to the lack of CORs to oversee execution of contracts.<sup>5</sup> The Comptroller General testified again in March 2008, confirming that deficiencies in contractor-oversight personnel have cost the government money and hampered the process of ensuring that contractors are performing as required.<sup>6</sup> Interviews and briefings provided to Commission members as recently as April 2009 confirmed that problems with staffing CORs and monitoring contractor performance have changed very little.

Without proper oversight, the government cannot confirm that contractors are performing in accordance with contract requirements, cannot support payment of award or incentive fees, cannot support the certification of invoices for services performed, and cannot ensure that services critical for the completion of our military and reconstruction missions are performed. Any one of these conditions invites waste and abuse. Taken together, they are a perfect storm for disaster.

### ***COR Appointments Are Not Increasing with the Requirements***

The drawdown of combat forces in Iraq and the simultaneous buildup in Afghanistan are two strategic military changes that will require an increase in service- and construction-contract oversight in both locations. As bases close in Iraq, military units and their military CORs are leaving. In an April 2009 interview at Camp Victory in Iraq, a Defense Contract Management Agency (DCMA) representative expressed concern over the agency's Central Iraq region, where military units have already moved out and left critical shortages in CORs overseeing remaining contractors in that area.

<sup>5</sup> GAO Testimony before the Subcommittee on Readiness, Committee on Armed Services, U.S. House of Representatives, 08-621T, Defense Acquisition: Existing Guidance and Other Actions Needed to Improve DoD's Oversight and Management of Contractors in Future Operations, January 23, 2008, 9-10.

<sup>6</sup> GAO Testimony before the Subcommittee on Readiness, Committee on Armed Services, U.S. House of Representatives, 08-572T, DoD Needs to Reexamine Its Extensive Reliance on Contractors and Continue to Improve Management and Oversight, March 11, 2008, 3.

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The Commission shares the DCMA representative's concern that the drawdown of military service members may leave the U.S. government's interests in a vulnerable position as contractors perform with even less oversight. As future drawdown plans are developed, ensuring that adequate numbers of CORs are assigned will become even more important to providing proper contractor oversight.

KBR, Inc., (formerly Kellogg, Brown, and Root) still provides support services in Southwest Asia under the Army's single-award contract (LOGCAP III). The U.S. Army recently awarded a follow-on contract for its Logistics Civil Augmentation Program (LOGCAP) requirements. The new LOGCAP IV contract now has three vendors—KBR, DynCorp International, and Fluor Intercontinental—who must compete for task orders. The transition to LOGCAP IV and its mandatory task-order competitions will increase the level of contracting activity and likely increase the number of active task orders that require COR oversight.

In a similar scenario, a preference to use local national companies in Iraq and Afghanistan for a variety of service contracts will also increase the requirement for oversight personnel.<sup>7</sup> With the amount of contract activity and number of task orders set to multiply, the number of CORs to monitor the contractors will need to increase commensurately.

COR understaffing exists throughout the U.S. Army Central Command area of operations, so certified CORs are often vastly overworked. In April 2009, Combined Joint Task Force-101 in Afghanistan told the Commission that one of their CORs had 19 contracts to monitor; a COR from Task Force Warhorse said he is responsible for overseeing 15 contracts and conducting four performance reviews—all as extra duty after he completes his three primary duties. The average COR in the region had 3.55 contracts to monitor. The shortage of CORs has prompted contract-oversight solutions of questionable effectiveness. DCMA told the Commissioners that contractor "self policing" had been tried, but "did not work out." A military officer said he knew of contracts being performed in Afghanistan that were being "monitored" by CORs physically located in the United States.

### ***Training For Military CORs Is Often Inadequate***

Adequate training for CORs plays an essential role in building a capability to effectively monitor of services provided by contractors. The DoD Inspector General

One soldier described the COR nomination and appointment process as a "Hey, you" pickup game.

<sup>7</sup> Section 886 of the 2008 National Defense Authorization Act authorized the set-asides; they are being implemented in part through the Iraqi First and Afghan First programs.

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noted in a 2008 report that problems with sparse training of oversight personnel had persisted since FY 2003 for operations in Iraq and Afghanistan.<sup>8</sup> When The Commission visited Camp Hammer and Camp Delta in Iraq, military service members said they arrived with no prior information about COR requirements or contractor management responsibilities. Because military service members are not made aware of COR requirements before their arrival, one soldier described the nomination and appointment process as a “Hey, you” pickup game. The COR at Task Force Warhorse in Afghanistan said, “we were given a two-hour course and told to run with it.”

This ad hoc “nomination” of untrained and inexperienced CORs has created a critical need for substantive, just-in-time COR training. Department of Defense CORs are required to complete the Defense Acquisition University (DAU) online COR training before appointment, but the interviewees in Iraq told the Commission that Web-based training is not easily accessible after arrival in theater because of information-technology infrastructure constraints and slow data-transmission rates. These constraints contribute to longer than necessary training periods, a harried experience for the COR nominee, and a gap in contractor oversight while training is pending. A pressing need remains for a better solution to the DAU COR training challenges.

The remote location of COR nominees and the need to reduce the time elapsed in appointing them makes it important to provide for DAU training through alternatives to instructor-led classes in the United States and Web-based training methods. These alternatives do not yet exist, even though the university has received more than 100 requests that COR training be distributed on a compact disc, according to the DAU Performance Learning Director interviewed by a Commission member in April 2009. Because COR training and certification is a prerequisite for appointment and the COR role is critical to contingency-contract management, in light of this unmet demand, the Commission intends to study the topic in more depth.

Nominating and appointing CORs for particular contracts is a continuous process because of the frequent rotations of personnel and constantly changing contingency-mission requirements. A Defense policy memorandum requires that COR assignments for contractor oversight be made prior to contract award, yet the advance appointment process does not provide a remedy for replacing CORs that rotate out of their assignments, leaving active contracts without government oversight.<sup>9</sup> The lack of collaboration among military and federal civilian employees involved in the contractor-oversight process makes the COR nomination and appointment process very

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<sup>8</sup> DoD Inspector General Report D-2008-086, Challenges Impacting Operations Iraqi Freedom and Enduring Freedom Reported by Major Oversight Organizations Beginning FY 2003 through FY 2007, July 18, 2008, 5-6.

<sup>9</sup> DoD, Secretary of Defense Memorandum, Monitoring Contract Performance in Service Contracts, August 22, 2008.

## MANAGEMENT AND ACCOUNTABILITY

challenging.

The Commission discovered positive changes in the stakeholders' approach to manage this shared responsibility. Contracting officials in the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A) and DCMA have begun monitoring the redeployment dates of CORs assigned to their active contracts. This visibility allows contracting officers to identify the need for replacements earlier,

Without accurate and timely contract-transaction data, acquisition managers cannot make quality strategic-sourcing decisions or provide necessary acquisition-workforce and budgetary resources.

provides nominees with an opportunity for advance training and familiarization, and ultimately avoids lapses in contractor oversight. However, the staffing and training of CORs remains a risk due to the ongoing absence of effective contract oversight. Immediate action by DoD leaders is necessary to ensure timely contract oversight while longer term staffing increases are being put in place.

### *Procurement and Contract Auditors*

Lack of resources within the Defense Contract Audit Agency (DCAA) is a significant factor contributing to ineffective audit coverage. The Government Accountability Office (GAO) has raised serious concerns about the quality of some DCAA audits of contractors' business systems.<sup>10</sup> DCAA's overall staffing levels have remained relatively constant at roughly 4,000 since FY 2000, even though DoD contract transactions have increased by 328 percent—from 304,500 in FY 2000 to over 1.3 million in FY 2006.<sup>11</sup>

With this rapid and significant increase, DCAA audit managers are faced with difficult choices as they manage and prioritize their workload. More often than not, the important DCAA-initiated audits of contractor business systems are postponed or deferred to perform customer-initiated audits that always receive the highest priority. Auditor staffing challenges are particularly acute in theater. During our spring 2009 visit to Afghanistan, we learned that DCAA has only four people there, two at Bagram Air Base and two at Kandahar. This staffing posture clearly limits the service DCAA can provide to valuable contract-audit requirements, as the announced buildup in Afghanistan takes place.

<sup>10</sup> GAO Report GAO-08-857, DCAA Audits – Allegations That Certain Audits at Three Locations Did Not Meet Professional Standards Were Substantiated, July 2008.

<sup>11</sup> Defense Business Board Report FY09-1, Independent Review Panel Report on the Defense Contract Audit Agency, October 2008, 5.

## KNOWLEDGE AND INFORMATION SYSTEMS

### *Data Systems Are Inadequate to Measure Contingency-Contracting Activity*

There are three common metrics for determining the level of contract activity: procurement transactions, budget appropriations, and contract disbursements. Determining the level of activity, the number of acquisition personnel to manage the activity, and where to assign the personnel are critical functions of contingency-contract management. Without accurate and timely contract-transaction data, acquisition managers cannot make quality strategic-sourcing decisions or provide necessary acquisition-workforce and budgetary resources. As a program or mission matures, acquisition managers must analyze contract-transaction data to glean information on a number of contract-management issues.

Fundamental data points that acquisition managers need for effective planning include:

- number of transactions,
- transaction values,
- contract type (for example, fixed-price or cost-reimbursement),
- classification of products and services being acquired, and
- locations of service-contract performance.

Reliable transaction information allows acquisition managers to make informed decisions about recruiting an adequate number of staff to manage the workload; identify appropriate skill levels for the acquisition team that will perform contract formation, administration, and oversight duties; and develop a budget forecast to accomplish the contract-management function.

The Federal Acquisition Regulation (FAR) requires executive agencies to collect and report their contract-transaction data to the Federal Procurement Data System-Next Generation (FPDS-NG) system.<sup>12</sup> Because it is extremely important that data contained in FPDS-NG are accurate, complete, and submitted in a timely manner, the Office of Management and Budget recently put additional emphasis on the data-collection process by requiring agencies to certify the results of a statistically valid data assessment and to report the accuracy and completeness of critical FPDS-NG data fields.<sup>13</sup>

Though the FPDS-NG database is much more comprehensive and accurate than it was even a few years ago, it still is not a reliable tool for determining the breadth and extent

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<sup>12</sup> FAR, subpart 4.603.

<sup>13</sup> Office of Management and Budget Letter, Improving Acquisition Data Quality—FY 2008 FPDS-NG Data, May 8, 2008.

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of current dollars obligated and current actions performed in support of operations in Iraq and Afghanistan.

In 2007, an audit of the FPDS-NG system revealed that it provided no method to distinguish procurement transactions of significant national interest from routine transactions.<sup>14</sup> The FPDS-NG system was then revised to include a national-interest-area field that can be used to designate the contingency or emergency to which it relates. The FPDS-NG system's national-interest-area field has been used increasingly to identify transactions that support domestic national emergencies, but it has not yet been used to track transactions supporting military contingencies.

Since the FPDS-NG system cannot be relied upon to produce accurate and timely information regarding the level of contingency contracting activity, acquisition managers often rely on information from alternative data systems as a measure of workload. The alternatives are budget appropriations and contract disbursements.

Budget appropriations, while common, are an imperfect metric. Contract obligations and performance often lag behind appropriated budget authority because only some portion of funds is obligated in the year appropriated. The time for planning and negotiating contracts makes annual procurement appropriations an unreliable indicator of workload and procurement activity in a given year.

Contract disbursements are also used to measure contracting activity. Contract payments made when goods and services are delivered would be a good measure of spending rates and actual performance activity, except that DoD does not track outlays for routine and contingency-related contracts separately. Without that differentiation, contract disbursements cannot be relied upon to accurately measure the level of contingency-contract activity.

Given the shortcomings of obligations, appropriations, and disbursements as measures of contingency-contracting activity, acquisition managers are left to the difficult task of analyzing some aspects of all three metrics to determine workload trends. The federal information systems' inability to provide reliable information has undoubtedly complicated contingency-contract management. The Commission will continue to analyze the information systems' limitations.

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<sup>14</sup> General Services Administration Inspector General Report A070101/Q/R/P07003, Limited Scope Audit of Disaster Reporting through the Federal Procurement Data System – Next Generation, March 30, 2007, 3.



***Complete and Accurate Numbers for Contractor Support  
in Southwest Asia Are Unavailable***

Contractors play a substantial role in supporting the United States' current military, reconstruction, and diplomatic operations in Iraq, accounting for a significant portion of the manpower and spending for those activities.<sup>15</sup> Aggregate data are available, but there is limited detail on the full array of contractor support—information that commanders and policymakers need to make mission-critical decisions.

There is no single, common operating picture of all contract support in the U.S. Army Central Command area of operations. In October 2007, DoD reported to Congress that functional oversight and control of the number of contractors who accompany U.S. forces to forward areas of operations in Southwest Asia had not been adequate because there was no capability for a centralized tracking and functional management process.<sup>16</sup> To address this issue, DoD designated the Synchronized Pre-deployment and Operational Tracker (SPOT) as the joint database for tracking contractor personnel, the active contracts on which they work, and other administrative information.

The DoD's alternative data source for contractor support personnel is the U.S. Army Central Command's quarterly census of contractors that tracks an aggregate number of contractor personnel. The raw data also include information on the number of contracts by the reporting contracting organization. The contractor-census report does not include contractor personnel working for agencies such as the Department of State or the U.S. Agency for International Development. The Commission has not located comparable data for these agencies.

In April 2008, DoD reported to Congress again, saying that SPOT would achieve 100 percent Web-based accountability of DoD contractors in the U.S. Army Central Command area of operations by the fall of 2008. As of April 29, 2009, the SPOT database reflects 159,579 active contractor records in SPOT, or approximately 66 percent of the number of contractors reported in U.S. Army Central Command's most recent census. The delay in achieving 100-percent accountability is due to several factors, including data-capture systems that do not link to one another and a lack of resources to deploy some data-capture systems.

U.S. Army Central Command's second-quarter fiscal year 2009 census reflected 242,657 active DoD contractor personnel in its Southwest Asia area of operations. This total includes 132,610 in Iraq, 68,197 in Afghanistan, and 41,850 in other Southwest Asia locations.

<sup>15</sup> Congressional Budget Office, *Contractors' Support of U.S. Operations in Iraq*, August 2008.

<sup>16</sup> DoD Report to Congress, *DoD Program for Planning, Managing, and Accounting for Contractor Services and Contractor Personnel During Contingency Operations*, October 2007.

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During its April 2009 trips to Iraq and Afghanistan, the Commission sought to identify the total picture of contractor support in those countries. Officials in both Iraq and Afghanistan told us that there was no central list of all contracts providing support. The Commission was unable to put together a complete footprint of the contracts being performed at the bases we visited. GAO has also been unable to identify complete and reliable data on contractor personnel in Southwest Asia. Only DoD provided data on the number of contractor personnel, but officials have told GAO that its census data were not routinely evaluated for accuracy or completeness.<sup>17</sup>

There is still no clear picture of who the contractors in theater are, what services they provide, which contracts they perform, and what their support costs are.

At Camp Delta, one official said, “contractors directly or indirectly affect every mission on this [forward operating base].” Data were equally incomplete in Afghanistan. One base commander in Afghanistan said that other than LOGCAP, he had no idea of how many contractors were on and off his base daily. This lack of information affects many areas of a commander’s oversight and planning responsibilities—not the least of which is a commander’s responsibility for all personnel and activities under his or her area of operation.

### ***Contingency-Contracting Lessons Learned Are Not Shared Effectively***

The Commission’s authorizing statute requires that its Final Report shall, among other things, “identify lessons learned relating to contingency program management and contingency contracting covered by the study.” Lessons learned are harvested from experience: they are confirmed observations, but are more particularly observations that can be transmitted and used as policy, doctrine, or guidance for future action. Identifying, recording, and transmitting lessons learned is an important way to save time, lives, and money.

The U.S. government faces many of the same kinds of difficulties with contract management in Iraq and Afghanistan that were present in previous military operations. In 1997, the GAO’s National Security and International Affairs Division recommended that the Department of Defense incorporate lessons learned from the Bosnia peacekeeping mission and other Balkans operations to improve the efficiency and effectiveness of the Army’s LOGCAP contract.<sup>18</sup>

<sup>17</sup> GAO Report 09-19, Contingency Contracting: DoD, State, and USAID Contracts and Contractor Personnel in Iraq and Afghanistan, October 1, 2008, 6.

<sup>18</sup> GAO/NSIAD Report 97-63, Contingency Operations: Opportunities to Improve the Logistics Civil Augmentation Program, February 11, 1997, 25.

In its 2003 report to the U.S. Senate Committee on Armed Services, GAO recommended that the department ensure that the method used to gather lessons learned incorporate four process elements: collection, verification, storage, and dissemination.<sup>19</sup> In 2006, when the GAO's Director of Defense Capabilities and Management completed the agency's review of long-standing problems, he reported that no organization or entity within DoD was responsible for developing procedures to systematically collect information on the use of contractors to support deployed forces or to share its institutional knowledge.<sup>20</sup>

The Defense Department has since taken steps to improve its institutional knowledge-sharing processes. In 2007, DoD reported creation of a Joint Contingency Contracting Community of Practice knowledge portal that is housed on the Defense Acquisition University Web site. The Community of Practice Web site serves as a repository for policy and guidance information, pre-deployment information, tools, and after-action reports for use by the contingency-contracting community.<sup>21</sup> The DoD directed each military service to identify a point of contact for contributing after-action reports and lessons learned to the Community of Practice.<sup>22</sup>

The department also hosts a number of Web sites with reference and training materials to address the lessons-learned void. Examples include the Web sites operated by the Office of Defense Procurement and Acquisition Policy, the U.S. Joint Forces Command, the U.S. Army Central Command, and the Army's Training and Doctrine Command (TRADOC). The lessons-learned Web site is only one aspect of TRADOC's knowledge-management program. The Command employs lessons-learned integrators at its school houses and provides a contracting officer's representative booklet sized to fit in a military uniform's cargo pocket. TRADOC has also published three pocket-sized, waterproof, smart cards: "Contracting Officer Representatives," "The Commanders' Emergency Response Program," and "Contracting Basics for Leaders."

The multiple methods of disseminating the Defense Procurement Acquisition and Policy's "Joint Contingency Contracting Handbook" are another good example of DoD's improved knowledge-sharing processes. The handbook serves as a resource in Defense Acquisition University's contingency-contracting training course, is available in a hard-

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<sup>19</sup> GAO Report 03-371, Information Technology: DoD Needs to Leverage Lessons Learned from its Outsourcing Projects, April 25, 2003, 28.

<sup>20</sup> GAO Report 07-145, High-Level DoD Action Needed to Address Long-standing Problems with Management and Oversight of Contractors Supporting Deployed Forces, December 2006, 6.

<sup>21</sup> Defense Acquisition University, Acquisition Community Connection, <https://acc.dau.mil/CommunityBrowser.aspx>.

<sup>22</sup> Under Secretary of Defense, Defense Procurement and Acquisition Policy Memorandum, Points of Contact for After Action Reports and Lessons Learned - Contingency Contracting, June 12, 2007.

## MANAGEMENT AND ACCOUNTABILITY

copy cargo-pocket booklet, and is posted as a Web resource. The handbook also contains e-mail addresses and telephone numbers of Defense Acquisition University instructors who can provide contingency-contracting advice.

DoD's efforts to improve the collection and publication of contingency-contracting lessons learned are welcome signs of increased attention to a serious need for knowledge sharing. However, identifying and publishing lessons is of little use if their distilled guidance is not reaching the people who could benefit from it.

During the Commission's spring 2009 visits to Iraq and Afghanistan, federal civilian employees and military service members spoke of difficulties with accessing relevant lessons-learned information. Interviewees said they sometimes benefited from their predecessors' lessons learned, but complained that the lack of Internet bandwidth impeded their access to a vast collection of lessons and information available only on Web sites. Even if there were no connectivity problems, the interviewees explained, their time available for Web use was limited after a typically long work day.

Military service members told the Commission their pre-deployment training did not include lessons learned, and the normal seven-day overlap with the departing unit did not allow adequate time for relaying all the lessons that could prove helpful. In general, interviewees faced challenges to sharing, collecting, and disseminating lessons learned before, during, and after performing their contingency-mission roles.

As with other aspects of the Commission's work, fulfilling the mandate of identifying lessons learned in Iraq and Afghanistan will involve a great deal of additional research and analysis. The Commission will continue to identify examples of successful lessons-learned programs and will conduct a thorough review of work already done in this area by the Department of Defense, the Department of State, the U.S. Agency for International Development, nongovernmental entities, and coalition and NATO allies.

**POLICY AND PROCESS**

The Commission's work has revealed a number of contingency-contracting policy and process issues to be investigated in more detail. Our research to date has focused on the outsourcing of contingency-operations support services and its implications regarding the performance of inherently governmental functions. A few of these implications are discussed here.

***Outsourcing Increases the Risk of Contractors Performing Inherently Governmental Functions***

As the military operations in Iraq and Afghanistan have progressed, the military services, defense agencies, and other stakeholder agencies supporting the reconstruction

mission continue to increase their reliance on contractors. Contractors are now literally in the center of the battlefield in unprecedented numbers. In previous wars, the military police protected bases and the battle space as other military service members engaged and pursued the enemy. Today, contractors often support base security operations, dining facilities, motor pools, aircraft maintenance shops, convoys, convoy protection, and other support functions.

The increase in service contracting creates a need to define specific functions that are not appropriate for performance by contractors in a contingency operation.

The term “inherently governmental” is defined in various ways in statute, regulation, and the Office of Management and Budget (OMB) Circular A-76. Inherently governmental functions are those so closely related to the public interest that they must be performed by federal employees or service members. Activities that may not be appropriate for outsourcing to contractors include those that so closely support inherently governmental functions that they provide an opportunity to influence government decisions, and activities that are essential to the successful accomplishment of an agency’s mission.

### ***Guidance For Defining Inherently Governmental Functions Is Inadequate***

Recent legislation requires the Office of Management and Budget to review the many definitions of “inherently governmental function.”<sup>23</sup> OMB must determine whether the various definitions have sufficient clarity to ensure that only officers or employees of the federal government or members of the armed forces perform inherently governmental functions and other critical functions necessary for the mission success of a federal department or agency. The objective is to develop a single, consistent definition for the term.

The Commission’s statutory authorizing language requires it to provide specific recommendations to improve the process of determining which functions are inherently governmental and which functions are appropriate for performance by contractors in a contingency operation. The Commission plans to explore the factors that brought the U.S. government to the point where agencies rely so heavily on contracting for services.

### ***Contractors Have Always Supported Contingency Missions***

From the days of the Revolutionary War, when the Continental Army hired wagon drivers and contracted with beef suppliers, the U.S. military has relied on contractors for some support of wartime activities. The ratio of contractors to military personnel is now

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<sup>23</sup> Public Law 110-417, Title III, Section 321, Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, October 14, 2008.

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roughly 1:1 to 1.<sup>24</sup> The figure below shows how the ratio of contractors to military personnel has changed over time, and lists types of services our military has come to rely on contractors to provide.

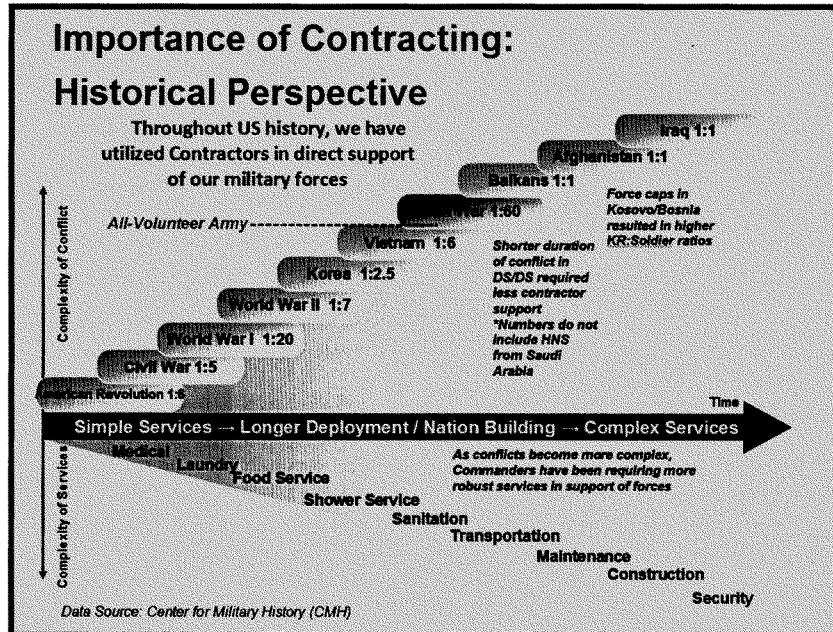


Chart provided to the Commission during a visit to DoD's Defense Procurement and Acquisition Policy office on February 25, 2009.

A number of institutional factors led the government to the current situation where contractor support has become critical to contingency mission success:

- lack of adequate contingency planning in advance of operations;
- lack of federal employees with the appropriate skills to perform the services;
- reduction of the military force structure and limits on the total number of military personnel authorized by Congress;
- requirements process for deciding the number of positions needed in the force structure; and
- relative ease of contracting for a service compared to the lengthy process of hiring civilian personnel.

<sup>24</sup> U.S. Army Central Command, CCJ4, Contracting Branch, May 11, 2009.

The Department of Defense reported to Congress in April 2008 that the missions in Iraq and Afghanistan are the first major contingency operations to reflect the full impact of the shift to heavy reliance on contractor personnel for critical support functions in forward operating areas.<sup>25</sup> Despite the key role of contractors in overseas operations, DoD lacks enough staff to provide adequate contract oversight. The State Department and the U.S. Agency for International Development also use significant levels of contractor support in Southwest Asia. The Commission will study and analyze the changes needed to prevent improper reliance on contractors in future contingency operations like Iraq and Afghanistan.

### ***Identification Of Essential Contractor Support Services Is Ineffective***

Responsibility for ensuring that all contractor services are reviewed annually, including new and existing contracts, and for determining which services are essential during crisis situations rests with the heads of DoD components. The components must also conduct an annual assessment of how the unexpected or early loss of essential contractor services would affect support to mobilizing and deployed forces, and incorporate the assessment results into their planning.

DoD Instruction 3020.37, "Continuation of Essential DoD Contractor Services During Crisis," issued in 1990 and updated in 1996, assigns responsibilities and prescribes procedures to implement plans that provide reasonable assurance that essential services will continue during crisis situations.<sup>26</sup> The Instruction includes direction for development of contingency plans to obtain essential services from alternative sources of supply when reasonable doubt about continuation of service exists.

The Department of Defense recognizes the importance of ensuring continuity of essential services provided by contractors, but has done little to identify those services or to develop backup plans should contractors become unavailable.

In 2003, GAO reported that DoD had not fully included contractor support in its operational and strategic plans. According to the report, the department was aware as early as 1988 of the need to identify contractors providing essential services, but had done little to comply in the next 15 years. Despite the direction given in Instruction 3020.37—that DoD components identify essential services provided by contractors and develop plans to ensure service continuation should contractors become unavailable—the directed reviews had not been conducted. GAO also found little had been done in

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<sup>25</sup> DoD Report to Congress, DoD Program for Planning, Managing, and Accounting for Contractor Services and Contractor Personnel during Contingency Operations, April 2008.

<sup>26</sup> DoD Instruction 3020.37, Continuation of Essential DoD Contractor Services During Crisis, January 26, 1996.

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operational plans or as separate documents.<sup>27</sup>

Based on its discussions with the Joint Chiefs of Staff Logistics Directorate and the U.S. Army Central Command, the Commission confirmed that little has been done since the 2003 GAO report. Compliance with DoD's Instruction is not taking place or being enforced. In theory, ground commanders identify which of their requirements are mission-essential. In practice, commanders appear to treat *all* contractor support as mission-essential. However, in a setting of constant change and shifting requirements, effective management of contractor support requires some means of distinguishing between critical and routine support activity.

During a March 2009 meeting with the Joint Chiefs of Staff (JCS) Logistics Directorate (J4) staff, the Commission learned that J4 is not aware of any official identification of mission-essential contractor support. The Vice Chairman of the JCS has established the Dependence on Contractor Support in Contingency Operations Task Force to address the issue. According to the task-force charter, several factors have led to an ever-increasing reliance on contractors across the range of military operations:

- the continual introduction of high-technology equipment,
- force structure and manning reductions, and
- the intense pace of operations.

The JCS task force plans to assess dependence on contractor support, develop a report, and brief senior leadership in June 2009. U.S. Army Central Command J4 staff is providing the JCS task force with data on contractor-support activities in the Southwest Asia area of operations. Contracting officials and operation planners from the U.S. Army Central Command's Logistics Directorate told the Commission they have not undertaken or heard of any other efforts to identify which contractors provide mission-essential support outside of the current JCS task force initiative.

## ORGANIZATIONAL LEADERSHIP AND ALIGNMENT

***Failure To Align Contingency Missions And Resources Created The Need For Special Investigations***

Special inspectors general (IGs) established in recent years have worked to expose contracting fraud and waste in the wake of a contingency or emergency. Congress has authorized establishment of the Special Inspector General for Iraq Reconstruction, the Special Inspector General for Afghanistan Reconstruction, and the Special Inspector General for the Troubled Asset Relief Program. The ranks of the Government

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<sup>27</sup> GAO Report 03-695, Military Operations: Contractors Provide Vital Services to Deployed Forces but Are Not Adequately Addressed in DoD Plans, June 24, 2003.



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Accountability Office, the Department of Defense IG, the Department of Homeland Security IG, and other audit organizations have grown as the number of at-risk federal programs has risen.

These organizations have issued numerous reports and held countless hearings on federal acquisition failures following contingencies and emergencies. The IGs are working to identify and hold accountable the persons responsible for abuse that can occur in the absence of effective organizational leadership and alignment. Despite the audit report findings and hearing testimony by acquisition leaders, time and again Congress appropriated supplemental budgets to acquire the equipment and services required to prepare for and recover from contingencies and emergencies without providing adequate resources to obtain the acquisition support services necessary for obligating and expending the funds during contract formation and execution.

Effective acquisition leaders understand that professional staff, tools, resources, training, and incentives are necessary to ensure adherence to the fundamental deterrents of federal acquisition waste, fraud, and abuse: competition, transparency, and fairness.

Had the federal government committed adequate resources to contract-management and oversight functions, it would not need to spend as much now on special inspectors general to determine what went wrong in the acquisition process. The Commission will work to help ensure that future contingencies are adequately resourced to align the mission with the federal acquisition workforce necessary to support it.

### ***Agencies Have Not Fully Implemented Prior Recommendations***

One of the Commission's major objectives is to conduct a thorough assessment of the systemic problems identified with wartime contracting. Hundreds of reports related to wartime contracting have been published by research and oversight organizations. The 1,287 recommendations contained in these 537 reports reflect the extensive effort already conducted on problems identified in contingency contracting in Iraq and Afghanistan.<sup>28</sup>

The table below shows oversight-agency reports issued in the period FY 2003-FY2009 on contingency contracting and the number of relevant reports and recommendations.

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<sup>28</sup> They include reports by the Government Accountability Office, DoD Inspector General, Department of State Inspector General, U.S. Agency for International Development Inspector General, Army Audit Agency, Naval Audit Service, Air Force Audit Agency, Special Inspector General for Iraq Reconstruction (SIGIR), and Special Inspector General for Afghanistan Reconstruction (SIGAR).

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Oversight Agency	No. of Reports Reviewed	No. of Recommendations Reviewed
Department of Defense, Office of Inspector General	68	174
Army Audit Agency	79	239
Naval Audit Service	1	2
Air Force Audit Agency	15	50
Special Inspector General for Iraq Reconstruction	135	302
Special Inspector General for Afghanistan Reconstruction	0	0
Department of State Office of Audits	13	42
United States Agency for International Development, Office of the Inspector General	71	180
Government Accountability Office	129	228
Congressional Budget Office	4	0
Congressional Research Service	18	0
Other	4	70
<b>Total</b>	<b>537</b>	<b>1,287</b>

We will analyze the recommendations made in each category. We will consider the extent to which the recommendations are implemented and what impedes implementation.

The Commission is building on this audit work on contingency contracting for Iraq and Afghanistan. Sometimes the recommendations are implemented and have fixed the identified problem. At other times, recommendations that have been accepted and implemented have not fixed the problem. Some recommendations have been made over and over. The follow-up processes are not always the same, nor are the standards for closing recommendations. Nevertheless, whether recommendations are closed or not, some of the same problems continue.

The Government Accountability Office and DoD, State, USAID, and the Special Inspectors General for Iraq and Afghanistan follow up on the status of the recommendations they make and classify them as open or closed. In addition, they report on this status in semi-annual reports. Some oversight organizations, such as the Congressional Budget Office or the Congressional Research Service, do not make recommendations. Some special entities, such as the State Department's Kennedy Panel and the Army's Gansler Commission, have made recommendations that are being

followed.<sup>29</sup>

Institutional barriers or situations may exist that are not being addressed or that prevent a recommendation from resolving the underlying issues. These barriers may or may not have been identified. In keeping with the Commission's authorizing legislation, we are identifying these situations and will select several of the most high-risk problems for future analysis.

The ongoing analysis includes a review of the reports related to contingency contracting published between FY 2003 and FY 2009. A number of themes surface in these reports, such as staffing issues, inadequate internal controls, and the need for more training of personnel with contracting responsibilities.

## FINANCIAL ACCOUNTABILITY

The Defense Contract Audit Agency was among the first audit agencies to establish a sustained presence in theater. DCAA set up its Iraq Branch Office in May 2003 with the primary purpose of improving financial accountability by providing in-theater oversight of contingency contractors. During DCAA's six-year presence in Iraq, regional contracting commands made relatively few requests for its audit services. DCAA could provide a variety of pre- and post-award audit services to the contingency-contracting community, but other parties have not used its services to full advantage.

The Commission recognizes that without effective contractor oversight and accountability in a contingency environment, the contracting process is ripe for waste, fraud, and abuse. Our preliminary research revealed four major problems:

- ineffective contractor business systems,
- ineffective resolution of audit findings,
- ineffective use of DCAA resources in the contingency environment, and
- ineffective management of subcontractors.

The Commission's efforts to date have been limited to evaluating DoD contractor oversight activities based primarily on data obtained from DCAA, DCMA, and the many audits previously published. We have met with representatives from DCAA and DCMA during office calls in the United States, Iraq, and Afghanistan. Over the coming months, the Commission will expand its efforts by conducting additional visits to the

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<sup>29</sup> Department of State, Report Of The Secretary of State's Panel on Personal Protective Security Services in Iraq, October, 2007; U.S. Army, Report Of The Commission On Army Acquisition And Program Management In Expeditionary Operations, Urgent Reform Required: Army Expeditionary Contracting, October 31, 2007.

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agencies, various buying commands, and other organizations to assess the adequacy of actual oversight activity.

***Ineffective Contractor Business Systems  
Increase the Likelihood of Waste***

Based on an analysis of data covering some \$43 billion in high-value awards to 15 contractors in Iraq and Afghanistan, we learned that roughly 30 percent of contractor business systems audited by the Defense Contract Audit Agency contained significant deficiencies. The same analysis reveals that contractor billing systems and estimating systems were deficient at even greater rates—50 and 42 percent, respectively. The table below reflects the adequacy of several categories of contractor business systems and the timeliness of DCAA's audits of the systems.

Status of Contractor Business System	Audits for 15 of the Largest Contractors								
	Is System Adequate?			Audit Completed Within Cycle?			DCAA Audit Completed Timely?		
Business Systems	Yes	No	%No	Yes	No	%No	Yes	No	%No
Accounting	9	3	25	9	6	40	12	2	14
Billing	6	6	50	12	3	20	10	3	23
Budget	10	1	9	8	7	47	9	2	18
Compensation	5	5	50	9	6	40	7	4	36
EDP	11	2	15	10	5	33	12	1	8
Estimating	7	5	42	8	6	43	8	4	33
Indirect/ODC	7	3	30	10	5	33	6	4	40
Labor	8	3	27	10	5	33	8	4	33
Purchasing	6	3	33	7	8	53	7	2	22
TOTALS	69	31	31	83	51	38	79	26	25

Table Notes:

1. DCAA generally performs audits of 10 contractor business systems; however, our analysis was limited to the nine business systems identified.
2. For some contractors a specific business system audit may not have been completed or may be in process. Consequently, the Yes/No values associated with each system may not equate to 15, the number of contractors surveyed.

Significant deficiencies in contractor systems increase the likelihood that contractors will provide proposal estimates that include unallowable costs or that they will request reimbursement of contract costs to which they are not entitled or which they cannot support. Through fiscal year 2008, the DCAA has taken exception to over \$13 billion in questioned and unsupported costs associated with the efforts in Iraq and Afghanistan.<sup>30</sup> A significant portion of these questioned and unsupported costs reflect problems with contractors' inconsistent and ineffective business management systems. Even though many cost questions are resolved with additional research and documentation, the rework represents time and effort that could be applied elsewhere if business systems were up to standard.

<sup>30</sup> Testimony of April Stephenson, Director, Defense Contract Audit Agency, before the Commission on Wartime Contracting, May 4, 2009, 4.

Provisions in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement require contractors to maintain effective and reliable business systems as a condition of contract award and/or cost-based contract financing.<sup>31</sup> Adequate business systems help to ensure compliance with contract terms and conditions and applicable laws and regulations.

The environment in Iraq and Afghanistan has been and continues to be susceptible to waste, fraud, and abuse because contractors generally do not have “accounting and business systems and systems of internal controls that were designed for the magnitude of effort required by the contingency contracts or for the conditions in which they were expected to operate.”<sup>32</sup>

### ***Business Systems Audits Are Not Conducted in a Timely Manner***

As reflected in the table above, the Commission’s preliminary analysis revealed that roughly 40 percent of DCAA’s audits of business systems have not been performed within prescribed timeframes. DCAA policy requires contractor business systems (for example, accounting, billing, estimating, labor, and purchasing systems) that have a significant impact on contract costs be audited at least once every four years.<sup>33</sup> In addition, roughly 25 percent of the most recently completed business-system audits took longer than one year to complete, with several audits still in process after several years. Lack of timely audits increases the likelihood that significant deficiencies are not visible to contracting officers as they make contract-award and other contracting decisions. Lack of timely audits also creates an environment where contractors can be slow to implement improvements to their business systems. Without the proper incentives, some contractors may not improve internal-control processes to accommodate the volume of contingency-contracting activity and support the conditions in which they are operating.

### ***Contract Auditors Are Not Employed Effectively In Theater***

Under ordinary circumstances, contracting officers request auditor assistance in evaluating prospective-contractor systems to assess whether they are adequate for the type of contract contemplated; this is commonly referred to as a “contractor pre-award survey.” Auditors may be asked to examine contractor proposals to ensure that estimated costs are reasonable, and to advise on the proposal’s adequacy as a basis for negotiating a contract price. On flexibly priced contracts—contracts that allow reimbursement for actual costs incurred—auditors often provide continuing audit surveillance during performance to help contracting officers ensure that actual costs

<sup>31</sup> See FAR subparts 16.301-3 and 32.503-6, and Defense Federal Acquisition Regulation Supplement (DFARS) subpart 242.7501.

<sup>32</sup> Testimony of April Stephenson, 33.

<sup>33</sup> Defense Contract Audit Manual, subsection 5-103.1(a).

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incurred are allowable under the terms of the contract. The absence of continuing audit surveillance at high-risk, remote locations is exacerbated by DCAA's limited travel to these locations. This is a serious issue because hundreds of millions of dollars are incurred and billed on cost-type contracts, especially LOGCAP and construction work.

Despite the high value of such audit services for contingency contracts—especially contracts with foreign-national companies whose accounting systems and pricing techniques often differ from those of U.S. companies—contracting officers have not made effective use of DCAA resources in Iraq and Afghanistan.

Without pre-award audits, the risk grows that contracts will be awarded to unqualified bidders and that contract prices may be unreasonably high.

Limited auditor oversight of contractor practices during contract performance also increases the risk of excessive charges against flexibly priced contracts.

### ***Contract Audit Functions Require Additional Emphasis***

Today, the DCAA and the Defense Contract Management Agency provide contract-audit, contract-oversight, and contract-administration services for DoD, using uniform policies and procedures. While DCAA was established primarily to support all of DoD and its contracting efforts, the agency also provides similar services to non-DoD entities including the U.S. Agency for International Development and the Department of State on a cost-reimbursable basis. DCMA is responsible for applying a uniform set of oversight procedures to ensure that DoD contractors are held accountable for failure to comply with laws, regulations, and contract terms and conditions.

Audit coverage for contractors performing in theater is provided by DCAA's Iraq Branch Office. Much of DCAA's work is commonly referred to as either "self-initiated" or "discretionary." Self-initiated audit services may be performed by the Iraq Branch Office, at the request of a stateside auditor. Examples of self-initiated audit services include audits of contractor business systems, audits of Cost Accounting Standards compliance, and audits of operational economy and efficiency. Discretionary audits are generally planned by the DCAA stateside office auditors, as opposed to being requested by the contracting officer.

Unlike the situation in Iraq and Afghanistan, DCAA stateside auditors are generally located close to where contractors maintain their books and records. The most common type of audit service provided by DCAA at the contract's place of performance is known as a "direct labor floor check." These floor checks are designed to determine whether contractor employees are physically present, are performing the required work, and are charging to the proper contracts and projects. Other observations that DCAA auditors make at the place of performance are designed to validate charges for direct materials

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acquired and consumed in support of contractors' delivery of services or supplies.

Several aspects of contract economy-and-efficiency (operations) audits present a unique value to contract cost control. Contracting officers must remain especially alert to the prospect that because contingency-contracting procedures allow for exceptions to normal competitive-pricing requirements, contractors may incur unreasonable operating costs in a contingency environment. Also, the fast pace of operations often reduces the government's ability to effectively control costs. Audits of contractor operations conducted by DCAA auditors are a particularly helpful method for maintaining cost control on high-dollar, complex, non-competitively awarded, and/or cost-reimbursable contracts.

Department of Defense Joint Publication (JP) 4-10 establishes doctrine on planning, assessing, and conducting operational contract-support integration and contractor-management functions in support of joint contingency operations.<sup>34</sup> JP 4-10 emphasizes that commanders must address the method of cost control in their operations plans. With respect to DCAA, the publication states that "on-site auditors are responsible to identify practices needing improvement on a real-time basis and recommend cost avoidance opportunities to selected contingency contracts." JP 4-10 goes on to say that the sustainment phase of a contingency operation should be marked by a focus on cost reduction and establishing business efficiencies.

The Iraq Branch Office has in some cases made important cost-saving discoveries while inspecting contract work sites. For example, a contractor submitted questionable expenditures for housing units known as living containers and justified the costs by claiming the containers had special features and enhancements. DCAA auditors inspected containers at a number of locations in Iraq and determined these particular living containers did not have enhancements and thus were unreasonably priced. This is one example of the obvious value of employing auditors at the contract place of performance. Nevertheless, DCAA policies and practices in the contingency operating area have tended to inhibit travel by auditors outside their base of assignment for safety concerns.

At the same time, DCAA is not aggressively self-initiating audits, especially on-site audits of contractor operations. The DCAA Director testified before the Commission that the agency will give greater priority to conducting on-site economy and efficiency (operations) audits, and generally agreed that there are opportunities for additional cost avoidance. At that same hearing, DCMA Director Williams committed the support of DCMA in assisting DCAA as appropriate

**Contingency-acquisition officials do not take full advantage of available audit services.**

<sup>34</sup> Joint Publication 4-10, Operational Contract Support, October 17, 2008.

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with the technical aspects of such reviews.<sup>35</sup> The Commission will continue to follow the agencies' progress on this initiative and analyze any actions taken. The Commission believes that this action is a critical and largely missing component to prevent waste, fraud, and abuse.

***Contracting Officials Make Ineffective Use of Contract Withhold Provisions***

The Defense Federal Acquisition Regulation Supplement requires the contracting officer to consider withholding a percentage of future payments when it is determined that contractor business systems contain significant deficiencies.<sup>36</sup> The contracting officer would generally implement withholds against Defense Department contracts after receiving a DCAA audit report with findings of significant business-system deficiencies.

In her May 2009 testimony, the DCAA Director stated that auditor-recommended withholds would normally be in the range of 10 percent; however, indications are that DCAA field auditors have been reluctant to make withhold recommendations. Given the lack of such recommendations, contracting officers often do not use the withhold provision or hold contractors accountable for the adequacy of their business systems.

Our independent analysis of five of the 15 high-value contractors revealed that 24 of 39 business systems were determined by DCAA to contain significant deficiencies. These five contractors account for over \$34 billion in cost-reimbursable contract awards.

Until recently, DCAA had not taken action to recommend withholds on future contract billings at these five contractor locations. Without the use of withholds, contractors have little incentive to adequately address the deficiencies. DCAA recognized the reluctance of its field personnel to recommend withholds and recently issued guidance reaffirming agency policy to do so when appropriate.<sup>37</sup> As a result, DCAA field personnel recently recommended withholds at four of the five contractor locations where completed audits determined the subject business system to be inadequate as a result of significant deficiencies.

The Commission believes that the use of withholds associated with future billings serves as a powerful incentive for contractors to improve their business systems. For example, in a case involving a contractor who provided translators and interpreters in Iraq and

<sup>35</sup> Commission on Wartime Contracting, record of oral testimony, May 4, 2009.

<sup>36</sup> See DFARS subpart 242.7502.

<sup>37</sup> Defense Contract Audit Agency, Memorandum for Regional Directors 08-PAS-043(R), Audit Guidance on Significant Deficiencies/Material Weaknesses and Audit Opinions on Internal Control Systems, December 19, 2008.



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Afghanistan, DCAA found the company's labor system inadequate and recommended that the contracting officer implement a withhold against future billings. The contracting officer agreed and roughly \$43 million (representing approximately 10 percent of labor costs) was withheld from the February 2004 through January 2006 billings. As deficiencies were addressed, withholds were incrementally released, and by September 2007, the contractor had corrected all significant deficiencies and received all the funds withheld.

Without enforcement of strong penalties, contractors simply do not have an incentive to devote the resources necessary to improve their systems and often do not do so. For example, our analysis revealed that DCAA has cited certain contractors for the same system deficiency over several audit cycles, demonstrating that the contractor has not devoted the necessary resources to implement corrective actions as generally promised.

In her testimony before the Commission, the DCAA Director emphasized the agency's commitment to ensuring contractors are held accountable for maintaining adequate business systems by recommending that specific percentages of interim payments be withheld where appropriate.<sup>38</sup> The Commission recognizes that DCAA serves an advisory role and it is generally the Defense Contract Management Agency's administrative contracting officers that have the authority to implement DCAA recommendations. This is vitally important in resolving reported system deficiencies to effect contractor improvement.

The Commission believes greater consideration of DCAA recommendations and documentation of negotiation results by DCMA is required.

Both the DCAA and DCMA directors agreed to increase their personal coordination over the coming months. The Commission will monitor DCAA's implementation of its policy and DCMA's actions to ensure that contractors operating in Iraq and Afghanistan are held accountable for maintaining effective and reliable business systems.

### ***Many Contract Audit Findings and Recommendations Are Not Properly Resolved***

The Commission analyzed the Department of Defense Inspector General's (DoDIG) recent report on contract audit follow-up actions with respect to Iraq reconstruction contracts administered by the Defense Contract Management Agency.<sup>39</sup> In several cases, DoDIG found that audit findings had not been properly dispositioned in accordance

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<sup>38</sup> Testimony of April Stephenson, 33.

<sup>39</sup> DoDIG Audit Report D-2009-6-004, Defense Contract Management Agency Actions on Audits of Cost Accounting Standards and Internal Control Systems at DoD Contractors Involved in Iraq Reconstruction Activities, April 8, 2009.

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with DoD Instruction 7640.02.<sup>40</sup> They have had not been promptly processed, adequately justified and documented, and/or adequately coordinated with the Defense Contract Audit Agency. Two of the three DCMA offices reviewed by the DoDIG had not implemented adequate controls to ensure an effective contract audit follow-up function.

Although the Inspector General's report was limited to specific types of DCAA audit findings covered by the existing Instruction, the Commission has observed that contracting officers do not always adequately justify and document departures from auditor findings regardless of whether they are covered by the Instruction. Like the DoDIG, the Commission observed that contracting officers are often not resolving DCAA audit findings of deficient contractor business systems, which are covered by the Instruction. We also learned that contracting officers are not adequately documenting departures from audit recommendations regarding questionable costs on contractor proposal estimates, which are not covered by the existing Instruction. The Instruction apparently has little effect on the priority contracting officials place on resolving audit findings and recommendations.

A comparison of total questioned costs to questioned costs sustained or upheld during negotiations is a good indicator of contracting officers' acceptance of DCAA recommendations. In her May 4 testimony, DCAA Director Stephenson said that about 65 percent of the amounts questioned by DCAA is sustained by contracting officers. A briefing by DCAA to the Commission, however, indicated that less than 40 percent (\$1.3 billion of \$3.4 billion) of DCAA questioned amounts related to the contingency efforts in Iraq and Afghanistan have been sustained through August 2008.<sup>41</sup> Applying the DCAA average cost-sustainment rate to the questioned contingency-related contract costs would have produced nearly \$1 billion in additional audit savings.

DCMA agreed with virtually all the DoDIG recommendations and is implementing improvements. The Commission intends to follow up within a reasonable timeframe to determine whether the reported deficiencies have been corrected. We also plan to examine contract audit follow-up practices at the Department of State and the U.S. Agency for International Development to determine if there would be some value from DCAA independently auditing their flexibly priced contingency contracts.

The Commission places a high value on the contract auditor's role in promoting contract economy and efficiency, and in combating waste, fraud, and abuse. The findings in the DoDIG report are significant and their recommendation to re-emphasize in policy and practice the requirement to perform thorough contract audit follow-ups will likely improve contracting officers' consideration of auditor opinions. Because resolution of

<sup>40</sup> DoD Instruction 7640.02, Policy for Follow-up on Contract Audit Reports, August 22, 2008.

<sup>41</sup> Briefing to the Commission on Wartime Contracting by April Stephenson, DCAA Director, September 2008.

audit findings is so important, the Commission will explore extending the DoD Instruction 7640.02 policy requiring justification for departures from covered audit findings to include findings on questioned contractor-proposal costs and other significant contract-audit recommendations.

### ***Subcontractor Cost-Control Management Is Ineffective***

DCAA Director Stephenson testified before the Commission that subcontractor billings make up about 70 percent of the costs on prime contingency contracts.<sup>42</sup> DCAA found that prime contractors have not consistently monitored subcontractor performance against the negotiated statements of work and have not actively engaged subcontractors in cost-control activities or initiatives.<sup>43</sup>

While prime-contractor performance is monitored by government officials, subcontractor performance may only be monitored by the prime contractor or a higher-tiered subcontractor.

The government has no privity of contract—no binding, mutual relationship—with the subcontractor and is limited to dealing with and through the prime contractor. When large elements of a contract are performed by subcontractors, fewer contract dollars are subject to direct government review.

The challenges of managing foreign subcontractors are compounded by barriers of language, culture, and business customs. Foreign subcontractors are generally not familiar with the unique requirements of U.S. government contracting and operate under different financial-reporting requirements and disciplines.

- Prime contractors operating in theater often rely on a large number of foreign subcontractors to accomplish the variety of services required by their contracts. This has two serious consequences. The first is the contracting officer's reduced insight into and oversight of the foreign subcontractor because of no contract privity and inadequate prime contractor business systems. When coupled with our observations of prime contractors' ineffective management of subcontractors cost and performance, the lack of oversight becomes very risky.
- The second consequence arises from a subcontractor's failure to perform. Nearly 80 percent of the contractor personnel in the U.S. Army Central Command area of responsibility are foreign nationals, most working as subcontractors for American companies. The contract's most important terms and conditions apply to the subcontractors; however, the governments of Iraq or Afghanistan do not

<sup>42</sup> Testimony of April Stephenson, 27.

<sup>43</sup> Ibid.

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cooperate with the U.S. efforts to enforce federal procurement laws. The practical matter is that the United States has little remedy for a foreign subcontractor's unfair pricing and failures to perform.

Unfortunately, not much has changed to implement cost-control policy and procedures after several years of contingency operations. During a meeting with the Special Inspector General for Iraq Reconstruction (SIGIR) in March 2009, SIGIR representatives told the Commission that their auditors were continuing to encounter problems with foreign subcontractors. For instance, SIGIR investigators discovered information indicating that foreign subcontractors were involved in contract-kickback agreements, but their status as foreign entities made it difficult to investigate the offenses.

In the early stages of contingency operations, prime contractors' control systems (including subcontractor-oversight procedures) were not in place and contract requirements were not well defined. For example, DCAA auditors reported that internal controls for six of nine key business systems at KBR were less than adequate, particularly KBR's purchasing system. The use of an inadequate purchasing system to execute urgent projects using subcontractors, many of them foreign, contributed to ineffective contract management and increased the potential for waste, fraud, and abuse.

Many "fixed-price" contracts executed to support the missions in Iraq and Afghanistan actually vary with the contractor's level of effort; that is, the contracts may include fixed labor rates, but the contract price can vary depending on the level of effort the contractor actually expends. Since the contractors build their profit into the fixed labor rates, there is little incentive to limit labor hours. When subcontractor labor is used on these fixed-price, level-of-effort contract types, especially intense oversight is necessary to ensure that subcontractor labor is used efficiently and that hours charged are accurate and reasonable.

The government's interest in prime contractors' cost-control management systems extends to subcontractor performance. However, prime contractors often fail to audit the subcontractors' proposed and incurred costs for allowability, allocability, and reasonableness. The dilemma with managing subcontractors is to establish an appropriate process that will provide the government with more visibility into subcontractor operations without affecting the prime contractor's relationship and contractual responsibilities. The Commission will explore potential alternatives in its future research.

**ON THE AGENDA**

Solving systemic contingency-contract management challenges is critical, not only to prevent contracting waste, fraud, and abuse in Iraq and Afghanistan, but to effectively manage future contingency operations. The preceding discussion highlighted several

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challenges the U.S. stakeholder agencies have struggled with since 2001 when contingency operations began in Afghanistan. We continue to face many of the same issues in 2009—a clear indication that our acquisition leaders have been unsuccessful in their attempts to manage the five cornerstones of an effective acquisition function: human capital management, knowledge and information systems execution, policy and process implementation, organizational leadership and alignment, and financial accountability.

The Commission will continue to study and analyze the management issues discussed in this Interim Report. We will identify and assess issues specifically related to government organizational structure, workforce and workload management, contractor accountability, and contingency management policy. Our Final Report will include actionable recommendations to improve the intractable management challenges discussed here and throughout the report that have yet to be resolved.

### *Human Capital*

- Analyze the various agencies' efforts to develop a contingency contracting corps and the status of efforts to implement the inter-governmental corps authorized in Section 870 of the 2009 National Defense Authorization Act.
- Assess methods of remedying understaffing of contract oversight and audit functions, and assess the effectiveness of current efforts to estimate the optimum numbers and types of acquisition personnel.
- Evaluate barriers to deploying civilian employees in theater to support wartime contingency operations through directed assignments, adjustment of tour lengths, and compensation incentives.

### *Knowledge And Information Systems*

- Assess what shortcomings in government knowledge and information systems undermine the accomplishment of the Iraq drawdown and the build-up in Afghanistan.
- Assess the process for collecting, verifying, sharing, and disseminating contingency contracting lessons learned by the Departments of Defense and State and by USAID.

### *Policy And Process*

- Consider what processes and controls should be in place to manage decisions and assess risks of outsourcing logistics and security support services that may be considered inherently governmental functions.
- Assess the inherently governmental issues raised when contractors oversee other contingency contractors.
- Analyze the appropriateness of reliance on contracts for services if the failure to perform would endanger mission success.

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- Assess the need for changes in laws, regulations, and contract requirements to improve visibility of subcontractor performance during a contingency operation.
- Determine the circumstances in which the United States should give contract award preferences to host-country firms in the U.S. Army Central Command area of responsibility.
- Assess the desirability of creating and implementing a single government-wide Contingency Federal Acquisition Regulation.
- Address the question of when sustainment contracting begins and contingency contracting ends.
- Determine the problems that arise from contingency contract requirements having been poorly defined and not definitized in a timely and effective manner.
- Investigate issues surrounding the lack of adequate competition and determine methods to improve the extent of competition to satisfy contingency contract requirements.

***Organizational Leadership And Alignment***

- Identify and assess the effectiveness of contracting lines of authority and organizational alignment of the acquisition function in the U.S. Army Central Command area of responsibility.
- Explore the need to revise the roles and responsibilities for contingency contract management, and identify the training and tools necessary to accomplish the contract management mission.
- Identify political, institutional, funding, and other barriers to implementing reforms to contingency contracting.
- Identify the issues and methods to improve cooperation, communication, and collaboration among key stakeholders in determining contractor support requirements as part of military exercises for planning future contingency operations.
- Determine why prior recommendations from the audit community have not fixed significant contingency contracting problems.

***Financial Accountability***

- Identify and evaluate opportunities for the improvement of contingency contractors' financial, accounting, and administration systems, thereby reducing the risk of waste, fraud, and abuse.
- Consider how best to improve accountability in contingency contractor performance, including affirmative consideration of performance in source selection, award fee determinations, and contractor performance evaluation.
- Evaluate methods for improved analysis of contractor cost proposals, including determinations of the reasonableness of estimated contingency contract costs and adequacy of business systems.
- Identify methods for improving in-theater contractor oversight.

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- Determine if the Department of State and the U.S. Agency for International Development are obtaining effective contract audit service support.

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# Logistics

Despite the key role of contractors in logistical support of overseas operations, the Department of Defense lacks the staff to provide adequate contract oversight. Inadequate oversight, combined with poorly written statements of work, lack of competition, and contractor inefficiencies have contributed to billions of dollars in wasteful spending. The drawdown of U.S. forces in Iraq brings the risk of more waste. Money is being wasted on completing projects that are no longer needed. And poor control of U.S. government property in Iraq that must be moved, handed over to the Iraqis, or scrapped could cause even more waste.

### PERVASIVE UNDERSTAFFING ADVERSELY AFFECTS LOGISTICS CONTRACT MANAGEMENT

Understaffing at all levels damages the ability of the U.S. government to effectively manage LOGCAP—the Army’s Logistics Civil Augmentation Program—and all other logistics efforts. This understaffing increases the potential for waste, fraud, and abuse. For example, inadequate staffing can prevent determining whether requirements were properly set and whether contractors are efficiently providing what their contract requires.

LOGCAP, the dominant channel for contractor support to the military in theater, merits a bit of historical background. The LOGCAP program was established in 1985, primarily to plan for contingencies and to leverage existing civilian resources. In 2001, the third iteration of the program, LOGCAP III, was competitively awarded to KBR as sole provider. Under this contract, specific work requirements are awarded by government task order without further competition. LOGCAP III has been used mainly in support of operations in Iraq, Afghanistan, and Kuwait, as well as Djibouti, Jordan, Kenya, Uzbekistan, and Georgia.

LOGCAP IV, the fourth iteration of the program, is a multiple-award contract competitively awarded in April 2008 to DynCorp International LLC, Fluor Intercontinental, and KBR Services. Each contractor can receive up to \$5 billion of work under the contract in a given year, so total spending over the possible 10-year life of the contract could be as high as \$150 billion.<sup>44</sup> Meanwhile, work contracted under LOGCAP III continues, so a slow segue from one contract to another is under way.

Work under both LOGCAP III and IV is performed under discrete task orders. A new

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<sup>44</sup> U.S. Army news release, Three Firms to Vie for LOGCAP Services in Theater, April 18, 2008. [www.army.mil/-news/2008/04/18/8594-three-firms-to-vie-for-logcap-services-in-theater](http://www.army.mil/-news/2008/04/18/8594-three-firms-to-vie-for-logcap-services-in-theater).



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requirement under LOGCAP IV, however, is that each task order is competed among all three performance contractors, and each contractor must bid on every task order. Early transitioning work from LOGCAP III to IV indicates the potential for substantial savings. The first large-scale work to be transitioned was the task order for a wide array of services in Kuwait. Competition resulted in the Army awarding the task order to the contractor that proposed to do the work for \$70 million—a \$55 million or 44 percent saving over the \$125 million charged for comparable work under LOGCAP III.

Contract work in Afghanistan is currently being performed under the new, competitive LOGCAP IV. As of the Commission's May 4, 2009 hearing, however, no task orders under LOGCAP IV had been competed for work in Iraq. The Commission is very concerned with the pace of this transition.

Every agency interviewed by the Commissioners, both stateside and in theater, has said that understaffing strains their ability to execute their LOGCAP-related missions. In his May 4, 2009, testimony before the Commission, the LOGCAP Program Executive Director said the program has grown over the years, but its organizational support structure has not kept pace with increasing mission demands. The Director of the Defense Contract Management Agency said at the same hearing that DCMA is short of staff, and that the agency's needs will be even greater as it takes on more contract oversight in Afghanistan and in the transition from the LOGCAP III to LOGCAP IV contracts.

The issue also surfaced in Government Accountability Office (GAO) testimony before the House Committee on Armed Services in February 2009. GAO noted "several cases in Iraq where [having] too few contract oversight personnel limited the Department of Defense's ability to identify savings, monitor contractor performance, or resolve contractor performance issues." These personnel shortfalls are a DoD-wide problem, GAO said, but "the more demanding contracting environment at deployed locations creates unique difficulties for contract oversight personnel."<sup>45</sup>

Although the Army is taking steps to increase its acquisition workforce, GAO noted in its House testimony that, "this will take several years, and in the interim, the problems posed by personnel shortages in Iraq and elsewhere are likely to become more significant in Afghanistan as we increase the number of forces and the contractors who support them there."

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<sup>45</sup> GAO Report GAO-09-380-T, Iraq and Afghanistan: Availability of Forces, Equipment, and Infrastructure Should Be Considered in Developing U.S. Strategy and Plans, Statement of Janet St. Laurent, Managing Director Defense Capabilities and Management before the Committee on Armed Services, House of Representatives, February 12, 2009.

***Both LOGCAP Program Management And Contracting Offices Have Been Chronically Understaffed***

Senior LOGCAP management officials told us in March 2009 that their office must lead the largest transition of its kind since World War II—moving forces within and out of Iraq while at the same time transitioning from the single-contractor LOGCAP III contract to the three-contractor LOGCAP IV contract in Iraq, Afghanistan, and Kuwait. The LOGCAP office faces this prospect with an authorized staff of 23 government personnel, but with no more than 13 actually on board in recent years. The office has therefore augmented its staff with contractor personnel from its management-support contractor, Serco, Inc.

Another resource for the LOGCAP Program Office is the LOGCAP Support Unit. The Support Unit is an Army Reserve unit staffed with LOGCAP Support Officers (LSOs). They provide the interface between LOGCAP and units in the field that use its services, such as the 4<sup>th</sup> Infantry Division and the 82<sup>nd</sup> and 101<sup>st</sup> Airborne Divisions.

Because personnel in supported units continually rotate in and out of theater, they are not experienced in writing clear, concise requirements for services under LOGCAP. Numerous reports and audits have documented that constantly changing or inadequately drafted requirements are major cost drivers for LOGCAP and many other programs. Having an LSO embedded with the unit preparing requirements helps translate the requirements into a form that meets the government standard for generating a task order. The LSOs also help prepare statements of work, and evaluate the contractor's cost proposals.

The LOGCAP Support Unit, however, has been at half strength for several years and faces the prospect of losing its entire staff. Its staffing source, Army Reserve Command, notified the LOGCAP Support Unit that it would receive no more personnel to fill LOGCAP support billets as of April 2009. LOGCAP Program Office has raised this matter with the Department of the Army and is awaiting a decision. Meanwhile, personnel are rotating out of theater without being replaced. LOGCAP-Iraq officials told us the only way they can fill the personnel requirements is through in-theater recruiting. To mitigate the support-office shortfall, the LOGCAP Program Office plans to have the LOGCAP management support contractor, Serco, provide contractor personnel.

Support officers also work with local military units to identify contracting officer's representatives (CORs) who can monitor contracted services and work with the Defense Contract Management Agency to get them properly appointed. Even if the Army Reserve Command resumes supplying LSOs, problems are likely to persist. Because many of the LSOs are not properly trained acquisition professionals, the quality of their work does not always meet the need for generating clear and concise requirements or monitoring performance. In addition, the LOGCAP Program and Contracting Offices

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told the Commission that it would be helpful if every LSO were a trained COR—not to act as a COR, but to advise the supported unit on what CORs do and give guidance. Finally, LSOs sometimes struggle to execute their assigned functions. One officer at Camp Phoenix in Afghanistan was assigned to assist seven forward operating bases, but often could not visit them due to travel constraints, so requirements statements suffered.

The LOGCAP Program Office is co-located in Illinois with the Rock Island Contracting Center, which also suffers from understaffing. Its executive director told the Commission that Rock Island is authorized 384 personnel to support its contracting mission, but as of February 2009 had only 279 on hand. The result is six-day work weeks of 10- to 12-hour workdays. Rock Island is working to hire additional staff to get up to 300, but training takes time. Meanwhile, staff shortages are becoming particularly critical at upper levels due to retirements of experienced personnel.

The Commission asked the LOGCAP Program and Contracting Offices to report how personnel shortages affect them. They reported in April 2009 that overall “program readiness [was] negatively impacted and in jeopardy, impacting Force Enabler capability to support the Army.” The contract office was unable to deploy personnel to provide LOGCAP-specific expertise in support of current operations in Iraq and Afghanistan, while the program office was unable to conduct budget formulation and track program expenditures associated with the prime contracts.

***Lack of Contracting Officer's Representatives  
Is Particularly Acute for LOGCAP***

Another major area of understaffing for LOGCAP is the number of CORs assigned in Iraq and Afghanistan. CORs support contracting activities as the government's eyes and ears at the site where the contractor is performing the task.

Without a COR to examine and report on LOGCAP work, the contracting officer has no information about the quality of contractors' work—or if it was performed at all.

When the Defense Contract Management Agency has been delegated contract management responsibility, as with the LOGCAP III and IV contracts, then its Administrating Contracting Officers have overall contract-management responsibility. They are supported by DCMA's quality assurance representatives (QARs), who in turn are supported by CORs provided by the units receiving LOGCAP support.

During its April 2009 visits to Iraq and Afghanistan, the Commission obtained information on LOGCAP COR shortages:

- In Afghanistan as of April 18, 2009, DCMA had a requirement of 516 CORs for

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LOGCAP III/IV, but had only 186 appointed—a 36 percent fill rate—with another 118 in training.

- Even with all those currently appointed and in training, only 59 percent of the required CORs will be in place for operations in Afghanistan.
- For Iraq and Kuwait LOGCAP CORs, as of March 30, 2009, DCMA had a requirement of 1,026 CORs with 722 appointed, a 70 percent fill rate.

Units receiving LOGCAP support in theater are responsible for identifying people to act as CORs. Getting them assigned and appointed is a joint responsibility of DCMA and the LOGCAP Program Offices in Iraq, Afghanistan, and Kuwait. A January 2009 Multi-National Force-Iraq Operation Order directed LOGCAP Support Unit personnel in those countries to help recruit CORs throughout the theater. Once they are identified, DCMA is responsible for ensuring that they are trained.

### *More Logistics Subject-Matter Experts Are Needed*

Adequate staffing is particularly critical in technical areas, such as CORs who can provide technical support for the expansion in Afghanistan. A logistics working group has noted that CORs with special skill sets such as electrical or construction expertise will be required for the Army's planned growth and infrastructure buildup to be performed under LOGCAP.

The buildup will consist at first of 17,000 personnel and seven battalion-sized forward operating bases and will include temporary military construction. Personnel with a construction background will be needed to effectively monitor contractor compliance and performance. In February 2009, DCMA identified a shortfall of 170 CORs in the oversight of this buildup; this is in addition to the shortfall in LOGCAP CORs discussed earlier. DCMA asked the Afghanistan command logistics directorate for help with this unit-COR shortfall as well as other gaps in high-risk areas requiring specialized technical skills for evaluating contractor performance and compliance such as safety.

**In February 2009, DCMA identified a shortfall of 170 CORs for the Afghanistan buildup.**

Discussions throughout Iraq revealed agreement that many CORs monitor contractors without having the specific skills and experience necessary for oversight. The Commission met with DCMA, in-country LOGCAP officials, camp "mayors" (the Army equivalent of facilities managers), military commanders, and personnel assigned as CORs. Subject-matter experts can fill this void by providing technical expertise to assist quality assurance representatives and CORs in evaluating whether contractors are properly performing services such as electrical installation and repair as well as working efficiently. QARs and CORs expressed concern that they cannot call on a government subject-matter expert for help in monitoring or to answer questions in specific instances.

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This can leave contractors as the only sources of expert information—a situation that obviously puts the government at a disadvantage.

The Commission was told during its April 2009 trip to Iraq that the lack of government subject-matter experts allowed safety hazards and contractor inefficiencies to go undetected, sometimes for years. DCMA determined that 57 subject-matter experts are needed—36 in Iraq and 21 in Afghanistan—to guide and advise oversight personnel in monitoring contractor performance in accordance with contract requirements. The need includes 14 facilities inspectors, 11 fire specialists, five petroleum specialists, and eight water-treatment experts. DCMA has established a working group to find solutions to the shortfall of qualified CORs and technical experts. It comprises representatives from the Joint Staff Logistics Directorate (J4), the Army Material Command, U.S. Army Corps of Engineers (USACE), and DCMA.

***Other Oversight Staffing Shortages Also Exist***

The DCMA Director, in his May 2009 testimony before the Commission, acknowledged that his agency is also short of personnel. In Afghanistan, DCMA officials briefing the Commission said their total personnel requirement for logistics was 100, up from the previous 55. The shortage was particularly severe for quality assurance representatives: only 22 were assigned. A mission analysis led to approval of DCMA's request for additional QARs in March 2009. DCMA expects to reach its newly authorized full complement of 44 QARs by September 2009. The agency has also identified a requirement for 21 administering contracting officers (ACOs), a 50-percent increase from the current authorized strength of 14.

DCMA also has a shortfall in property administrators (PAs). DCMA officials think the ill effects of that shortage are likely to be compounded by the Iraq drawdown and by the transition from LOGCAP III to LOGCAP IV.

Currently, 16 DCMA Iraq personnel manage over 614,000 line items of LOGCAP property worth over \$3 billion. Only three of those individuals are experienced property administrators that meet defense training and experience standards.
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DCMA is using several property analysts from the LOGCAP management support contract to augment its staff of property administrators.

Although efforts are under way to hire additional personnel for the LOGCAP Program Management Office, the Rock Island Contracting Center, DCMA, and Defense Contract Audit Agency (DCAA), and to increase the number of CORs, staffing shortages impair the ability to execute many agency functions. Because it takes so long to hire and train the right people, this is a long-term issue that requires management attention to resolve.

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One potential answer to the COR problem is to use only personnel from the units receiving contract support as CORs for a short period, perhaps six months, while initial operations are under way. After this time, a transition would be made to something akin to an Installation Management Command (IMCOM), which would provide professional installation-support services for the duration of operations, as is done at military bases in the United States. Under an IMCOM-type arrangement, a technical staff qualified in such areas as dining facilities, fuels, and fire-marshal responsibilities provides the technical and management expertise that allows combat units to execute their combat missions. Deployed units enthusiastically endorsed this solution, but it would require a change in policy. The Commission is exploring the pros and cons.

**BILLIONS OF DOLLARS IN WASTEFUL SPENDING  
HAS OCCURRED UNDER THE LOGCAP III CONTRACT**

Paying more than necessary for services provided constitutes wasteful spending. The Commission believes that the services provided by contractor KBR under LOGCAP III—with \$31.4 billion funded through March 20, 2009—could have been delivered for billions of dollars less. This belief is based on review of information from the Army Contracting Command award-fee boards, data given to GAO by the military services, analysis by the Defense Contract Audit Agency, and early experience as the Army transitions from LOGCAP III to IV—a process now well under way in Kuwait and Afghanistan, and scheduled to occur in Iraq.

We think it possible that services currently provided under LOGCAP III could cost billions of dollars less under the LOGCAP IV framework of competition for task orders. Work currently being performed under LOGCAP III is slowly being transitioned to LOGCAP IV, and all new work in Afghanistan has been competed and awarded under LOGCAP IV.

In a statement provided for the Commission's May 4, 2009, hearing record, KBR said its LOGCAP III work since 2003 has included serving more than 937 million meals, issuing more than 7 billion gallons of fuel, handling more than 335 million pounds of mail, washing more than 66 million bundles of laundry, and hosting more than 152 million visits to morale, welfare, and recreation facilities.

In-theater conversations with military personnel at all levels found overwhelming satisfaction and appreciation for contractor support services including arrangements for their care and feeding. However, the down side of the LOGCAP picture includes large costs that have been questioned by government auditors and substantial work that has never been properly evaluated.

## EXAMPLES OF WASTEFUL SPENDING

Substantial evidence supports the view that LOGCAP services cost too much. The evidence comes from the work of the LOGCAP contracting office's award fee boards, current actions being taken by LOGCAP contracting officials, the initial results of re-competing LOGCAP III task orders under LOGCAP IV, an internal report commissioned by the LOGCAP Program Office, GAO findings developed from discussions with Army and Marine Corps recipients of LOGCAP services, and DCAA reviews of LOGCAP work. The wasteful spending documented in their work reflects a combination of poorly written statements of work, inadequate oversight, and contractor inefficiencies.

The LOGCAP III award-fee board process addresses wasteful spending. In several 2008 decisions on the LOGCAP III contract, officials criticized KBR for not proactively seeking cost savings. The award-fee board determining official said he believes KBR handles issues expeditiously and effectively once they are identified, but lacks a proactive posture—a board observation cited as a consistent and systemic issue with KBR in November 2007.

In a March 2008 review of task orders in Afghanistan, the award fee board cited overstaffing as a systemic issue. A DCMA March 2009 performance-evaluation board report for LOGCAP task order 151, providing support for the U.S. Embassy in Iraq, said KBR needs to take more initiative to find contract cost savings. DCMA officials in Iraq repeated that conclusion during April 2009 talks with The Commission about KBR's work there.

The Commission also learned during its April 2009 trip to Iraq of recent steps taken by LOGCAP officials to control costs. In February 2009, after the LOGCAP procuring contracting officer identified more than \$50 million in labor-cost overruns, KBR was directed to freeze hiring, to begin a responsible Iraq drawdown of personnel, and to decrease the cost and footprint of its operations in the country. In March 2009, the Army's LOGCAP executive director decided that by April 15, 2009, KBR was to remove all Iraq customer-liaison officers. And in April 2009, DCMA directed KBR to reduce fire equipment and personnel at 15 forward operating bases and reduce staff theater-wide for all fire fighting equipment.

Awarding the LOGCAP III contract to a single contractor (KBR) may have made sense in the early stages of operations in Iraq and Afghanistan, where a dynamic environment required flexibility and speed. However, in the current stage of relatively stable operations, it makes more sense to emphasize cost controls by introducing task-order competition, using multiple sources of supply, creating separate contracts for unique logistics services, reducing the layers of subcontractors, and awarding more fixed-price contracts with definite requirements.

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When various logistics services are bundled in a loosely defined statement of work and awarded to a single prime contractor, a high percentage of the work is generally performed by subcontractors. \$21 billion of the \$30 billion spent on LOGCAP III was paid to subcontractors.<sup>46</sup> This level of subcontracting is an advantage for rapidly building scale, but without close oversight by the prime contractor, it also presents significant challenges for cost control.

***The Government Accountability Office Has Identified Savings Obtainable Through Greater LOGCAP Efficiency***

GAO has shown that when government officials reviewed work under LOGCAP III, savings have been generated by eliminating or reducing services and through more efficient contractor performance.<sup>47</sup> The GAO's work over the past seven years with Marine Corps and Army units receiving LOGCAP services illustrate how the government can and does identify cost savings:

- When Marines replaced Army forces in Djibouti in December 2002 to provide humanitarian assistance in a contingency environment, they also took over responsibility for funding LOGCAP services. Marine commanders reviewed the statement of work and reduced the \$48 million task order by an estimated \$8.6 million, or 18 percent. Marine Forces Central Command deployed teams of subject-matter experts to Djibouti twice a year to identify services that could be eliminated, reduced, or changed. The Marines also identified potential additional savings totaling more than \$2 million, including \$75,000 a year by switching from a commercial laundry detergent to one in the U.S. Marine Corps supply system.
- Army Central Command estimated that \$2.6 million could have been saved in March 2004 if it had contracted directly for food service at six locations in Kuwait rather than using LOGCAP. GAO calculated annual savings of almost \$31 million. Bypassing LOGCAP and making the LOGCAP subcontractor the prime contractor reduced meal costs by 43 percent with no loss of quality.
- The coalition forces military command at the time, Combined Joint Task Force-7, reviewed the task order for life-support services in Iraq in 2004. By eliminating services and an extra dining and laundry facility, it reduced the estimated cost of the task order by over \$108 million.

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<sup>46</sup> Commission on Wartime Contracting Hearing, Testimony of DCAA Director April Stephenson, May 4, 2009.

<sup>47</sup> GAO Report GAO-04-854, Military Operations: DoD's Use of Logistics Support Contracts Requires Strengthened Oversight, July 19, 2004.



***The Defense Contract Audit Agency  
Has Identified Unnecessarily High Spending***

The Defense Contract Audit Agency has recommended billions of dollars in reductions in proposed and billed costs under wartime contracts and identified billions of dollars in estimated costs that lack sufficient support. DCAA Director April Stephenson discussed LOGCAP III costs at the Commission's May 4, 2009, hearing. "I don't think we're aware of [another] program, contract, or contractor that has had this number of suspensions or referrals," she said. Examples of questioned spending cited in DCAA's testimony and/or DCAA reports include:

- In a 2004 review of KBR invoices for operating dining facilities in Iraq, DCAA questioned the practice of billing at the headcounts provided in the statement of work rather than for the substantially lower numbers of people actually being fed. The statement of work had not specified how the four-meal-a-day service was to be billed. The Army and KBR negotiated a \$55 million payment reduction. At the May 2009 hearing DCAA further stated that although KBR's actions in 2004 improved the dining facility (DFAC) situation, DCAA continues to have issues with reasonable subcontract prices. Subsequent to the Army's settlement of earlier questioned DFAC costs, DCAA has suspended an additional \$64.7 million that remain unresolved as of May 4, 2009.
- In April 2005, DCAA raised issues about the prices KBR was paying for "living containers" to be used for housing. DCAA found that KBR was paying one supplier more than twice what it was paying another for comparable living containers (\$38,293 versus \$18,292). The unit-price difference for the 4,100 living units KBR purchased equates to questioned costs of about \$82 million. DCAA auditors found that the highest-priced supplier had bought living containers from a Middle Eastern manufacturer, then doubled the manufacturer's price when reselling the units to KBR. DCAA disapproved \$51.3 million in living-container costs on March 17, 2006. In December 2006, the Defense Contracting Management Agency, the agency responsible for deciding what payments to allow, issued an interim decision allowing KBR to recover \$25.6 million of the \$51.3 million disapproved by DCAA. The remaining \$25.7 million was set aside by the DCMA contracting officer pending a final determination. DCAA said in its testimony that it continues to work with DCMA concerning their interim decision to allow KBR to recover \$25.6 million. KBR is disputing the disapproved costs through the claims process.
- In August 2007, DCAA questioned \$100 million of private armed security personnel costs. The LOGCAP III contract states that the Army will provide force protection to KBR; the contracting officer has determined that the contract prohibits the use of armed private-force protection. However, DCAA reported that KBR billed the government directly or indirectly for an estimated \$100 million of security costs. DCAA has suspended \$19.9 million in payments, which

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KBR is disputing under a claim filed with the Armed Services Board of Contract Appeals. A KBR filing with the Securities and Exchange Commission reported that suspended costs related to security could total \$400 million.

In addition, DCAA is reviewing \$277 million in LOGCAP III subcontracts involving KBR employees or ex-employees that have been or may have been involved in improper procurement activities. The purpose of DCAA's review is to assess the reasonableness of payments under those subcontracts.

***Regular Efficiency Reviews Are Needed***

No one performs regular, scheduled reviews of all task orders. GAO recommended in 2004 that teams of subject-matter experts travel to locations where contractors provide services to evaluate the support and make recommendations on the level, appropriateness, economy, and efficiency of services being provided. The Department of Defense said it would issue a policy memorandum to implement the recommendations. GAO reported that as of February 2005, no policy memorandum had been issued and no teams of subject-matter experts established or deployed.<sup>48</sup> DoD continues to agree with GAO's recommendation, but as of March 2009, GAO's Director for Defense Capabilities and Management told the Commission that DoD still has no systematic effort to assure that contractors are operating efficiently.

**THE IRAQ TROOP DRAWDOWN RISKS FURTHER WASTEFUL SPENDING**

Under the security agreement between the governments of the United States and Iraq, all U.S. combat forces are to withdraw from Iraqi cities, villages, and localities no later than June 30, 2009. All U.S. forces will withdraw from Iraqi territory altogether no later than December 31, 2011.

To implement the security agreement, the United States will close some forward operating bases as U.S. forces leave Iraq or transfer to other bases. As a result, some bases will grow in the short term, but all will ultimately close or be turned over to the government of Iraq.

During its April 2009 trip to Iraq, The Commission had a number of discussions and briefings on planning for and implications of the coming rebasing and drawdown of U.S. forces. Many of them dealt with matters of contractor support. Based on the

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<sup>48</sup> GAO Report, GAO-04-854 Military Operations: DoD's Use of Logistics Support Contracts Requires Strengthened Oversight, July 19, 2004; and GAO-05-328 Report Defense Logistics: High-Level DoD Coordination is Needed to Further Improve the Management of the Army's LOGCAP Contract, March 21, 2005.

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information we received, we have categorized issues associated with the drawdown into three major areas:

- closing bases;
- work in the pipeline, such as construction projects now underway at bases; and
- disposition of government-owned property that has been acquired by contractors, known as “white property” as distinct from green, or military property.

### *Closing and Transitioning Bases in Iraq – Lessons to Be Learned*

According to command officials, 351 U.S. bases now exist in Iraq. The plan is to reduce that number over the next two years to a handful of strategic bases and several dozen subsidiary bases. The Marine Corps is beginning this process, and plans to downsize to two bases. Army units are also beginning to close bases.

The Army closed Forward Operating Base (FOB) Rustamiyah, for example, and turned it over to the government of Iraq in late March 2009. The unit handling the closure gave The Commission an after-action briefing on the process and the challenges it had encountered. This base occupied almost seven acres and contained, among other things,

- a camp population of over 3,000, including government personnel and contractors;
- more than 400 containerized housing units and shower/bathroom trailers;
- 170 buildings;
- 17 guard towers; and
- over 175,000 gallons of JP-8 jet fuel in storage containers.

In the course of closing the base, a number of lessons were learned as the challenges were met:

- **Comprehensive transition guidance:** The brigade-support battalion identified three sets of guidance, each of which directed the transition or removal of different items of white property. The Commission learned that because of the lack of consistent guidance and clear communication, window-mounted air-conditioning units (white property) were removed from housing units and shipped to other bases for their use. It was later decided that the housing units from which the air-conditioning units were removed would be turned over to the government of Iraq intact. This information never flowed to LOGCAP and the DCMA. The air-conditioning units must now be returned to FOB Rustamiyah and reinstalled.
- **A way to synchronize requirements:** Base transition is complex and calls for close synchronization among organizations. There is currently no forum for this

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synchronization. The Rustamiyah after-action briefing recommended that Multi-National Forces Iraq (MNF-I) chair a base-transition working group to synchronize plans, policies, and procedures; synchronize transition timing between the operational and logistical staffs; and ensure unity of effort for the entire process.

- **A better mechanism to terminate contracts for providing support on the base:** Different contracts used on the base were managed in different ways by different people in different organizations. The after-action briefing also recommended that the transition working groups coordinate for and ensure that the appropriate paperwork for the termination of services is completed.
- **Synchronize operations and logistical support:** The brigade-support battalion recommended that all operational units leave the base about 45 days before closure, but at Rustamiyah that decision could not be supported operationally or logistically. The Commission learned that as the military population draws down, there are few if any military personnel to provide contract oversight as contractors perform the last closure steps. Between early January and the end of March 2009, the military population at Rustamiyah declined from 1,490 to 62, while the contractor population declined only from 928 to 338, reducing the military-to-contractor-employee ratio from 1.6-to-1 to 0.18-to-1.

### *Work in the Pipeline May Be Unnecessary*

As the United States rebases and draws down forces, new physical-infrastructure requirements continue to be identified, while work on some previously approved projects has either not begun or is still in process. The time limits on U.S. presence in Iraq make it important to decide which projects are still necessary. The Commission has identified more than \$2 billion in new projects in Iraq. About one-fourth are projects under LOGCAP, while three-fourths are military construction projects of the U.S. Army Corps of Engineers.

### LOGCAP PROJECTS

The new projects under LOGCAP fall into two categories: (1) those funded and for which the contractor has been given notice to proceed, but where work has either not begun or is in process; and (2) those requested by the customer and proposed to the contractor, but not yet funded, so that work has not been authorized to proceed.

The LOGCAP Contracting Office gave the Commission a list of projects in both categories totaling \$531 million. Of that total, funded projects with work authorized to begin between March 2008 and January 2009 amounted to \$217 million. Projects submitted between August 2008 and February 2009, but not yet funded, totaled \$314 million.

The coming drawdown makes many projects unnecessary. Senior command officials have ordered local commanders to review all authorized, uncompleted work and assess

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if it is still needed. Only work found necessary for the life, health, or safety of deployed personnel is to proceed. However, when we asked if there was a common definition of what work related to life, health, or safety, the answer was that there are no clear standards. In addition, LOGCAP officials told The Commission that the reviews are being conducted, work is coming off the task order, and they think units are making a good effort, but they have not been keeping track. The Commission is concerned that reviews may be taking place at too low a level and that there are no incentives to stopping work that may be unnecessary.

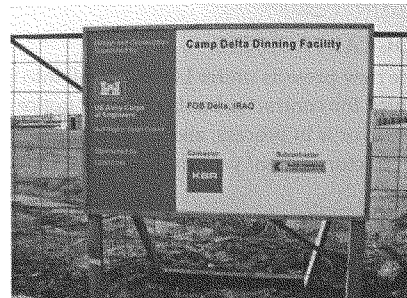
### CONTINGENCY CONSTRUCTION PROJECTS

In addition to LOGCAP projects, a number of projects using military construction funds are being undertaken by the U.S. Army Corps of Engineers on behalf of the U.S. Army Central Command (CENTCOM). At the Commission's request, Army Central Command gave us a list of all projects from fiscal year 2007 forward. The list contained a total of 82 Army projects valued at \$1.5 billion. These are projects identified by Multi-National Corps-Iraq (MNC-I) and managed by Army Central Command. It was a broad array of projects to be built at bases throughout Iraq, including base-security control points, wastewater treatment plants, landfills, replacement facilities, detainment facilities, hospitals, and dining facilities. Project values ranged from \$880,000 to \$137 million.

MNC-I officers continually reevaluate projects in light of changing conditions in Iraq. As a result, MNC-I has cancelled 39 projects valued at \$810.6 million, including all projects scheduled past fiscal year 2008; 43 projects valued at \$679.3 million are continuing. The Camp Delta dining facility discussed below is one of the continuing projects and involves a large, long-term investment in a camp that will close in less than three years. Army Central Command says it will work with MNC-I to assess the need for the approved projects and wants to ensure that funds are not spent on projects that no longer make sense.

### THE DINING FACILITY AT CAMP DELTA

One ongoing project is building a dining facility at Camp Delta in Iraq. It was submitted for \$36 million in funding on June 30, 2008. A \$30 million construction contract was awarded on September 30, 2008. The contractor was directed to begin work on October 31, 2008, and construction is estimated to be completed on December 25, 2009.



Army Central Command's June 2008 justification said the current facility was only one-fourth the size needed to serve the current population, the ceiling sagged, lighting was

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poor, air-conditioning was undersized for the load, the on-grade wooden floor was unsanitary, there was no overhead protection, and the serving kitchen was undersized. In July 2008, Army Central Command restated the urgency, saying the existing DFAC is a dilapidated facility in deplorable condition.

Unfortunately, Army Central Command inadvertently used outdated information in describing the need for the new DFAC. The Commission visiting Camp Delta in April 2009 observed the ongoing construction of the new DFAC, had all their meals at the existing one, and toured its food preparation and storage areas.

We also learned about a recent expansion of the existing DFAC. On July 17, 2007, an administrative change letter and notice to proceed were issued to the LOGCAP contractor to expand the current DFAC with work authorized at a cost of \$3.36 million. The letter said expansion of dining facilities in Camp Delta was required because the current DFAC could not handle the expected 4,000-person population of Camp Delta. The work requirements to expand the existing DFAC included enabling the DFAC to serve 4,500 personnel four meals per day with a three-hour feeding period per meal; increasing power generation to support additional HVAC, cooking, and food preparation areas; expanding the area around the DFAC for storage; expanding the seating capacity; expanding the refuse facility; installing force-protection barriers around the DFAC, and increasing space for hand washing.

The expansion was completed on June 14, 2008—just over a month before Army Central Command described the Delta DFAC as a dilapidated facility in deplorable condition and in urgent need of replacement. In May 2009, Army Central Command officials told the Commission that they were aware of the expansion of the existing DFAC, but had inadvertently not updated their justification.



Camp Delta's current DFAC (Commission photo)

During its visit, The Commission toured the service kitchen of the existing DFAC without seeing or hearing of any problems or shortfalls. We were told that foam covering has been added to the facility, which may make the building usable for approximately 10 years. We were also told that the camp's preventive-medicine personnel reported no medical issues with the facility.

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The May 2008 Base Camp Master Plan for Camp Delta states that planning horizons will be up to two years for immediate requirements, two to five years for short-range plans, and five to 10 years for long-range plans. The security agreement between the United States and Iraq has overtaken these planning assumptions. The security agreement states that U.S. military forces will depart Iraq by the end of 2011 and further states that at that time all real property will be turned over to the government of Iraq. Constructing the new DFAC will increase capacity by 1,500. Although the future camp population is unclear, U.S. military forces will use the facility for two years at most.

It appears that the major feature that the new DFAC would offer is an overhead cover to protect against mortar and rocket attacks. MNC-I told the Commission that hostile forces in Iraq continue to make such attacks and the need for protection remains. It is unclear why command officials would not have added an overhead cover at the height of the insurgency, or at least during the upgrade of the existing DFAC.

As noted, MNC-I project cancellations have left the Camp Delta DFAC as one of 43 projects whose construction is proceeding. The Commission discussed the need for the new DFAC with engineering officials at MNC-I. These officials said they are constantly assessing the need for construction projects in Iraq. They said conditions changed after the DFAC justification was submitted in June 2008, changed again in January 2009 when the security agreement was implemented, and remain subject to change as personnel and units shift among bases, division battle space, and the corps area. The constantly changing force posture and basing plans in the Iraq theater of operations adds uncertainty.

MNC-I officials later told the Commission that as of May 12, 2009, plans for Camp Delta were still in flux. Meanwhile, the existing DFAC is serving the camp population of about 4,000. These officials also said that construction of the new DFAC is well under way and at this point savings from cancellation will likely prove disappointing. The contractor has already ordered the bulk of his materials, and would have a legitimate claim for significant payment. MNC-I noted that past project cancellations have recovered only a fraction of what might be expected based on construction progress alone. That is, canceling a project that is 25-percent complete does not save 75 percent of the completed cost. MNC-I said that if the new DFAC were cancelled, it would consider expanding the existing DFAC, but thought the time and expense of such an effort would likely outweigh cancellation savings.

The Commission believes that if a prompt review of the need for a new DFAC had been undertaken when the security agreement was signed, the comparative merits of expanding the existing Camp Delta DFAC or completing the new one might have looked much different. The contractor was directed to proceed with the new construction on October 30, 2008, while negotiations were still under way for the security agreement that was signed on November 17, 2008. The case of the Camp Delta

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DFAC project underscores the need for an immediate high-level review of all proposed and ongoing projects throughout Iraq.

***Disposition of Property Will Require A Number of Decisions***

Billions of dollars in “white property”—contractor-acquired but government-owned—in Iraq will have to be disposed of. In February 2009 testimony before the House Armed Services Committee, the Managing Director of GAO’s Defense Capabilities and Management group said:

Maintaining accountability for and managing the disposition of U.S. government property under the control of contractors may present challenges to redeploying U.S. forces from Iraq. According to Defense Contract Management Agency officials, there is at least \$3.5 billion worth of contractor-managed government-owned property in Iraq.<sup>49</sup>

Command officials in Iraq estimated that there are 31 million items of property in all of Iraq, including military and white property. For LOGCAP alone, the largest contract providing services in Iraq, there are 614,000 “lines” of property, such as generators, valued at more than \$3 billion in total. It may be necessary to streamline some steps in the disposition process to meet mission needs and drawdown milestones.

Property disposition can include donating it to the government of Iraq, returning it to the United States, using it elsewhere in Iraq or Afghanistan, transferring it to other U.S. government agencies, selling it, or, if the property has no commercial value, scrapping it. Under the security agreement between the governments of Iraq and the United States, Iraq owns all buildings and structures that cannot be relocated, and assemblies connected to the soil that exist on agreed-upon facilities and areas, including those that are used, constructed, altered, or improved by U.S. forces.

Law, regulation, and policy govern disposition of government property. For Iraq, the Under Secretary of Defense, Acquisition, Technology, and Logistics has issued a procedural waiver to allow donating up to \$5 million (acquisition value) per forward operating base—not a large sum compared to the value of LOGCAP property at individual bases. Commission analysis of data from the LOGCAP property database showed that the smallest base has 3,906 line items of property valued at \$18.4 million, while the largest has 75,954 line items of property valued at \$577.6 million. For the 14 sites in central Iraq, the average was 11,555 line items of property valued at \$49.1 million.

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<sup>49</sup> GAO Report GAO-09-380-T, Iraq and Afghanistan: Availability of Forces, Equipment, and Infrastructure Should Be Considered in Developing U.S. Strategy and Plans, Statement of Janet St. Laurent, Managing Director Defense Capabilities and Management before the Committee on Armed Services, House of Representatives, February 12, 2009.



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Senior command officials are planning for the disposition of property and have reported a number of actions:

- Multi-National Corps – Iraq (MNC-I) is working on developing two orders, one to have commanders inventory property on their bases, the other to begin transition or disposition of material.
- Multi-National Force – Iraq (MNF-I) is developing a computerized “virtual warehouse” of all property on each base to avoid disposing of items at one base and buying new ones at another base.
- MNC-I is developing a policy memorandum defining real property. The closing of FOB Rustamayah generated some confusion over what constituted real property to be turned over to the government of Iraq.

The Commission has identified a number of challenges associated with white property disposition that DoD must and is working to address. They include:

- **Decisions on property disposition.** The Commission was told that commanders in Iraq have different perspectives on what stays and what goes. The current position is that everything stays; the previous commander had directed that everything would go. A related issue is the tension between the desire to reutilize material from closing bases versus the desire to turn functioning bases over to the government of Iraq. Ensuring full functionality would entail turning over not only real property per the security agreement, but other property such as furniture and wall-mounted air conditioning units.
- **Need to better understand the white-property disposition process.** MNC-I officials told The Commission that they have not yet developed a flow chart showing the process, including identifying the key decision points and who must make the decisions.
- **Property accountability.** Senior command officials told The Commission that defining white property might not be easy, particularly for property not acquired under LOGCAP. They said that they lack accountability for non-LOGCAP white property, including equipment acquired by local contractors. MNF-I officials also told The Commission that they are trying to clarify the situation with white and green (military) property, but are hampered by poor recordkeeping in the early years of Iraq operations.
- **The role of military units in the process.** To turn LOGCAP property over to the government of Iraq, KBR prepares a property inventory. The Army then prepares the official property disposition form to transfer the property to an Army unit, which can in turn transfer it to the government of Iraq. However, in closing FOB Rustamayah, some military units were unwilling to accept responsibility for the property.

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- **Possible need for increased waiver authority.** As noted earlier, the current dollar-value waiver authority for donating white property to the government of Iraq is very low. MNC-I officials believe that they need further relief from property-disposition requirements, but have not yet defined that need. Too much red tape and delays may result in property of use to the Iraqis going to waste because the documentation could not be arranged within base-closing deadlines.
- **Need to consider the needs of Reserve and National Guard units.** Back in the United States, these units have a high need for items useful either for training or for readiness. Every effort should be made to make otherwise unused property available for that purpose.

During their Iraq visit, the Commission heard concerns about what would happen to property turned over to the government of Iraq. Some were worried that local officials might convert property for their personal use or that bases would be looted—events that would, besides adding to waste, reflect poorly on the American effort in Iraq and on the effectiveness of hand-over planning. Political and military leaders should be aware of this possibility and consider what practical steps might mitigate the risks.

## CHALLENGES TO CONTRACTOR SUPPORT FOR THE AFGHANISTAN BUILDUP

As the focus of contingency operations turns from Iraq to Afghanistan, the Department of Defense is shifting forces and support resources. Applying logistics lessons learned from the Iraq buildup and the 2007 “surge” effort to Afghanistan could yield cost savings and increased efficiency. This is particularly important during the transition from LOGCAP III to LOGCAP IV.

Increasing U.S. troop strength in Afghanistan will require expanding numerous existing bases and creating new ones. LOGCAP IV task orders will support much of this expansion. During the April 2009 trip to Afghanistan, The Commission identified several lessons from the Iraq buildup and surge that can be applied in Afghanistan. Discussion of these lessons follows.

### *Understaffing Severely Impedes Efficient and Effective Execution of the Logistics Mission*

Adequate staffing, from the LOGCAP Program Office to individual contracting officer’s representatives, will promote full and effective government oversight of contractor efforts. LOGCAP Support Officers can help units develop requirements packages that avoid costly over-specifying or “gold-plating” requirements. LOGCAP program personnel can check price realism by generating an independent, government cost estimate. The Defense Contract Management Agency should be staffed with additional administrative contracting officers and quality assurance representatives. And proper

numbers of trained CORs in requesting units should be assigned to monitor and report on contractor performance at all locations where work is performed.

***The Time From Requirement Identification to Notice to Proceed Is Too Long***

Army guidance highlights the importance of early identification of requirements as key to maximizing the effectiveness of contractor support. In Iraq and Afghanistan it takes about 60 days from the start of requirements generation until the LOGCAP contractor is directed to proceed— if the process works perfectly. It rarely does. The Commission heard from many units that 120 days was the norm, not including time necessary (30 days or more) to provide the service called for in the requirement. However, the units responsible for supporting new units' arrival were often informed only 30 days in advance. The LOGCAP Deputy Program Manager in Afghanistan noted that earlier notification of service requirements could cut delays in getting support to requesting units.

***Far-Flung Bases and Rotating Units Exacerbate the Property-Management Problem in Afghanistan***

Property management is already a major issue in Afghanistan. One base operations officer at Bagram Air Base reported property all over the base whose ownership and maintenance status were unknown. A rapid troop build-up will exacerbate the problem by bringing in even more material as bases in Iraq are closed or consolidated. Matching material to needs, establishing serviceability, and transporting it to new locations will be big jobs. A scarcity of property administrators will impede management of the vast amount of material in theater.

**ON THE AGENDA**

The original planning for both Iraq and Afghanistan envisioned operations of short duration, so insufficient attention was given to the staffing of agencies and organizations involved in logistics support. Lack of planning has been exacerbated by the steady drawdown of contracting personnel across the government in recent years, and has led to a situation where personnel issues overwhelmed parts of the management of LOGCAP and other programs. The expanded and crucial new role of contractors, coupled with inadequate contract oversight, poorly written statements of work, and contractor inefficiencies, has resulted in billions of dollars of largely avoidable waste. The Commission continues to assess the role of contractors providing logistical support to deployed forces, including:

- Evaluate techniques for reducing service and system-support contract costs, including improved independent cost estimates, enhanced competition, and improved contractor oversight.

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- Assess potential alternatives to current logistics-contractor support, including the possible establishment of an installations-management command to manage facilities once a contingency operation stabilizes.
- Examine the role of logistics contractors in support of the Iraq drawdown and Afghanistan buildup.
- Study the management of U.S. government property in theater, with special attention to the efficient disposition of property affected by the ongoing Iraq drawdown and Afghanistan buildup.
- Identify reasons for the slow transition from LOGCAP III to IV.
- Analyze the effectiveness of the logistics planning process for future contingency operations.
- Examine the various types of contingency funding appropriations and their impact on logistics support decision-making.
- Assess recurrent or systemic problems with LOGCAP contractors' accounting or quality assurance.

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# Security

Security support during contingency operations has traditionally been considered primarily a military responsibility. As the duration and extent of security requirements in Iraq and Afghanistan increased, so did a compelling need to increase security support for the Departments of Defense and State and the U.S. Agency for International Development. They used private security contractors to fill the government-security staffing void.

In the wake of the 1983 attack on the U.S. Embassy in Beirut, Congress passed legislation authorizing the Department of State to provide security for all U.S. federal civilian personnel abroad, which enabled private security contractors to compete for security-service contracts in support of U.S. missions overseas.<sup>50</sup> The Department of State first employed private security contractors in Haiti during 1994; the next significant use of security contracting came in 2000 for support services in the former Yugoslavia. The U.S. security-support mission expanded—from Haiti to the Palestinian territories, Afghanistan, and most recently to Iraq in 2003.

Security services to guard U.S. military bases in the United States were mainly provided by military service members until after the terrorism attacks on September 11, 2001. As the U.S. government tightened security at military bases and simultaneously mobilized troops to fight in Afghanistan and then in Iraq, the Department of Defense engaged contractors to provide some security services.

Two distinct authorities are responsible for the security of U.S. federal civilian employees and contractors. The U.S. military, under the authority of the Secretary of Defense and the combatant commander, are responsible for the security of all personnel under direct control of the combatant commander, including Department of State and U.S. Agency for International Development contractor employees. The Department of State, under the authority of the Secretary of State, is responsible for the security of all other U.S. federal civilian personnel on official duty abroad and contractor employees.

Outsourcing this critical function may have unintended consequences, even though the use of private security contractors allows commanders to free military forces for core warfighting missions. This chapter discusses significant events in private security contracting, defines the various types of private security activities, and focuses on the consequences and challenges of outsourcing. It also outlines the differences that geography and culture play in the execution of security contracting services and their implications for acquisition planning in Iraq and Afghanistan.

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<sup>50</sup> The Diplomatic Security and Anti-terrorism Act of 1986, 22 U.S.C. § 4864.

## SIGNIFICANT EVENTS

Two events—the murder of four Blackwater (now Xe Services, LLC) security contractors in Fallujah, Iraq in 2004 and the killing of Iraqi civilians in Baghdad’s Nisur Square in 2007—heightened the visibility and intensified the scrutiny of private security contracting.<sup>51</sup> The events made international news, generated heated public debate, prompted executive-branch reviews, and sparked congressional investigations. The incidents brought to light the extent to which the U.S. government relies on private security contractors (PSCs) in Iraq, and revealed a breakdown in basic contract-management procedures. The public and Congress began asking questions: who are these private security contractors, what are they doing in Iraq, how are they being controlled, and what is their accountability for criminal behavior?

The four Blackwater employees were shot and killed in an ambush by insurgents while escorting a convoy in Fallujah on March 31, 2004. After the attack, the bodies of the four dead security guards were publicly desecrated by being beaten, set on fire, dragged through the streets, and hanged from a bridge crossing the Euphrates River. News of the event and media photographs provoked outrage in the United States.

The second event, the shooting of Iraqi civilians at the Nisur Square traffic circle in Baghdad on September 16, 2007, was a watershed moment for the U.S. and Iraqi governments and triggered a series of executive-branch reviews, investigations, and new regulations for the U.S. government’s use of PSCs. The facts and the circumstances surrounding this event remain in dispute and are the subject of an ongoing criminal prosecution. On December 4, 2008, a 35-count indictment returned in the U.S. District Court for the District of Columbia charged five Blackwater security guards with voluntary manslaughter, attempt to commit manslaughter, and use and discharge of a firearm during and in relation to a crime of violence.<sup>52</sup> The defendants were charged with killing 14 unarmed Iraqi civilians and wounding 20 others. The U.S. government alleged that the “34 unarmed Iraqi civilians, including women and children, were killed or injured without justification or provocation.” A sixth Blackwater security guard pled guilty on December 5, 2008, to charges of voluntary manslaughter and attempt to commit manslaughter for his role in the Nisur Square shooting.<sup>53</sup>

The Nisur Square incident highlighted fundamental policy concerns. One concern relates to the widespread use of and dependence on PSCs by civilian and military

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<sup>51</sup> Various spellings of the Square appeared in the media. The Commission has adopted the transliteration used by the U.S. Department of Justice in the charging documents.

<sup>52</sup> Blackwater was working in Iraq under a contract with the Department of State. The indictment (U.S. v. Slough, et al.) states that the defendants’ “employment related to supporting the mission of the United States Department of Defense in the Republic of Iraq.”

<sup>53</sup> U. S. Department of Justice Press Release 08-1068, December 8, 2008.

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organizations. Another relates to the implications of using PSCs to perform mission critical or potentially inherently governmental functions.

The following table shows the distribution of PSC personnel in Iraq and Afghanistan as reported in the U.S. Army Central Command's second-quarter FY 2009 census. These numbers include prime PSC contractors and most subcontractors performing under Department of Defense contracts.<sup>54</sup> Five years after their first use in Iraq, these subcontractors still pose a significant challenge. A SIGIR report in April 2009 found that "no organization appears to have visibility of subcontractor PSCs, which is a potential gap in PSC incident reporting processes."<sup>55</sup>

The table also includes PSC personnel working under the Department of State Worldwide Personal Protective Services (WPPS) and Baghdad Embassy Security Force contracts.<sup>56</sup>

Private Security Contractor Personnel in Iraq <sup>57</sup>				
	Total	U.S./Coalition	Third Country National	Local/Host Country National
Total DoD PSCs	12,942	681	10,596	1,665
Total Department of State PSCs (WPPS/Embassy)	3,321	1,050 / 200	321 / 1,600	10 / 140
Private Security Contractors in Afghanistan				
	Total	U.S./Coalition	Third Country National	Local/Host Country National
Total DoD PSCs	4,373	17	29	4,327
Total Department of State PSCs (WPPS/Embassy) <sup>58</sup>	689	94 / 179	20 / 321	5 / 70

The census data illustrate three important points: DoD employs significantly more PSCs

<sup>54</sup> U.S. Army Central Command, CCJ4, Contracting Branch, May 11, 2009.

<sup>55</sup> SIGIR Report 01-019, Opportunities to Improve Processes for Reporting, Investigating, and Remediating Serious Incidents Involving Private Security Contractors in Iraq, April 30, 2009, Summary.

<sup>56</sup> In Iraq and Afghanistan, the U.S. Agency for International Development receives all of its PSC support from the Department of State WPPS contracts.

<sup>57</sup> Department of Defense figures as of March 31, 2009; Department of State figures as of February 28, 2009.

<sup>58</sup> Congressional Research Service briefing document, Private Security Contractors: Possible Legislative Approaches, March 10, 2009, 3.

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than the Department of State; PSC employees in Afghanistan are primarily local/host-country nationals; and security services in Iraq are provided primarily by third-country nationals.

In Iraq, 25,000 to 30,000 PSC personnel work for U.S. agencies, the government of Iraq, coalition governments, and U.S. contractors. These numbers exceed the PSC census data in the table above because they include PSC support to the government of Iraq and coalition governments. The total U.S. spending for PSCs is estimated to be between \$6 billion and \$10 billion from 2003 to 2007. Of this amount, \$3 billion to \$4 billion is estimated to be for obligations made directly by U.S. government agencies, and \$3 billion to \$6 billion is estimated to have been spent by U.S. contractors to acquire PSC support.<sup>59</sup>

### *Private Security Contractor Incidents Initiated Reform*

After the Nisur Square incident in September 2007, the government of Iraq revoked Blackwater's license to operate in the country, putting in jeopardy activities at the U.S. Embassy. In response to the incident, the Secretaries of Defense and State implemented significant programmatic and interagency reforms to address the risk of PSC performance.

The Secretary of Defense initiated an investigation and within 10 days issued specific policy guidance advising unit commanders of their obligations and requirements under DoD Instruction 3020.41.<sup>60</sup> The Secretary reinforced the unit commanders' obligation to enforce their authority over Defense Department contractor personnel under the Uniform Code of Military Justice (UCMJ), and to detain, disarm, and apprehend violators pending a review and determination of their disposition. The memorandum heightened DoD oversight and broadened accountability over its private security contractors. The department augmented the Secretary's guidance with improved contract requirements under revised Defense Federal Acquisition Regulation Supplement (DFARS) clauses that added clarity to PSC operations.<sup>61</sup> The new DFARS requirements placed enhanced reporting and compliance obligations on PSCs. Other new contract clauses were embedded in contracts by the Joint Contracting Command-Iraq/Afghanistan (JCC-I/A).

The Department of Defense's policy and process improvements were steps in the right direction; the Department of State implemented its own changes as well. In October

<sup>59</sup> Congressional Budget Office, *Contractors Support of U.S. Operations in Iraq*, August 2008, 2, 13, 14.

<sup>60</sup> Deputy Secretary of Defense Memorandum to Secretaries of the Military departments; Subject: Management of DoD Contractors and Contractor Personnel Accompanying U.S. Armed Forces in Contingency Operations Outside the United States, September 25, 2007.

<sup>61</sup> DFARS subparts 225 and 252, effective January 15, 2009.



2007, the Secretary of State established the Panel on Personal Protective Services in Iraq, which issued a report with recommendations that led to changes to virtually every aspect of the Department of State's engagement and operation of PSCs.<sup>62</sup> These changes included recommendations to place cameras on security vehicles, called for the mandatory use of diplomatic security officers to accompany PSC details, and for enhanced coordination among agencies involved in such details. Another recommended improvement was to increase the capability to conduct investigations.

These recommendations culminated in an interagency Memorandum of Agreement (MOA) between the Departments of Defense and State dated December 5, 2007. It articulated interagency operating procedures, established an oversight collaboration process, and implemented common methods for monitoring PSCs. The collaboration process is designed to integrate operations and exchange information about PSCs. The MOA provisions also define the rules of responsibility, authority, and standards for the accountability and operations of PSCs in Iraq. The MOA covers the use of force, authority to carry firearms, movement control, the reporting of serious incidents, and legal accountability.

Although the MOA is intended to prevent a situation in which PSCs working for different elements of the U.S. government follow differing policies and regulations, it applies only to Iraq. There is no similar agreement for Afghanistan or other countries where private security contractors of the two departments work side by side. The Commission plans to examine this issue, along with the following issues, in order to evaluate how implementation flows from policy and directives into the contracts and how the PSCs are being overseen:

- standards of conduct, including ethical standards, the Rules of Engagement, and the Rules for the Use of Force;
- training requirements and compliance, including the number of hours, and frequency and methods of training; and
- personnel hiring procedures, including the use of third-country nationals, reliance on labor brokers, performance of background checks, verification of education, and consideration of past performance.

### ***Legislative Remedies To Improve Security Contract Management***

While the improvements by both Defense and State to the process of PSC oversight were significant, they did not allay the public outcry over the Nisur Square incident or dampen congressional interest. During 2007 and 2008, congressional leaders held many hearings to address the PSC incidents and responded with a number of legislative initiatives. The most influential are sections 861 and 862 of the National Defense Authorization Act of 2008, which demonstrate the depth of concern about the incidents

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<sup>62</sup> Report of the Secretary of State's Panel on Personal Protective Services in Iraq, October 2007.

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and the expansion of congressional focus beyond Iraq to Afghanistan.

Section 861 directed the Departments of Defense and State to execute a Memorandum of Understanding to address all contracting procedures, including the movement of contractors, the establishment of common databases, and the consideration of the UCMJ to bring accountability to PSCs.

Section 862 was tailored specifically to regulate PSCs. The requirements direct the Department of Defense, in coordination with the Department of State, to enact regulations on the selection, training, equipping, and conduct of personnel performing security functions under a covered contract in the area of combat operations. The regulations are to specify:

- a process for registering, processing, accounting for, and keeping appropriate records of personnel performing PSC functions in an area of combat operations;
- a process for authorizing and accounting for weapons carried by personnel providing private security functions;
- a process for registration and identification of armored vehicles, helicopters, and other military vehicles used by PSCs;
- an incident reporting procedure;
- a process of independent review of incidents;
- requirements for qualification, training, and screening, including background checks;
- knowledge of the Rules for the Use of Force; and
- development of specific contract clauses to require compliance with these goals and objectives.

Section 862 was subsequently augmented in Section 832 of the 2009 National Defense Authorization Act. The Sense of Congress provisions set forth additional guidance for PSC management: security operations in high-threat environments should ordinarily be performed by members of the armed forces if the use of deadly force is probable; sole discretion for determining whether performance by a private security contractor is appropriate rests with the commander of the combatant command; the armed forces should have enough trained personnel to perform security operations without having to rely on private security contractors; and regulations issued by the Secretary of Defense should ensure that private security contractors are not authorized to perform inherently governmental functions in combat areas.

In the coming months, the Commission will continue to inquire into the effectiveness of these initiatives and the possible need for additional policy or legislative remedies for the use and employment of PSCs.

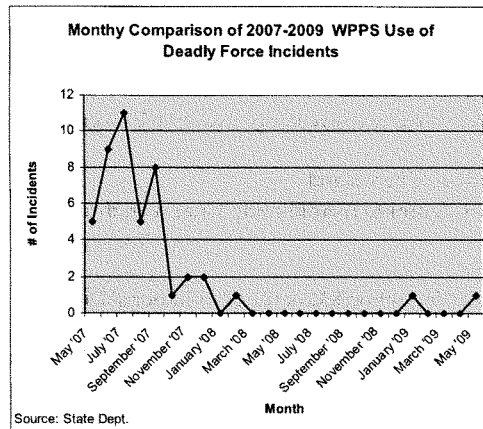
## SECURITY CONTRACTING CURRENT ENVIRONMENT

### *Definitions Of Security Mission Areas*

Private security contractors provide a number of security-related functions. The Commission will focus its study on the following security-support activities, each of which has a specific function:

- personal security: the protective security for high-ranking U.S. government officials and U.S. federal civilian personnel, and other individuals traveling in unsecure areas;
- convoy security: the protection of convoys traveling in unsecured areas;
- static security: the protection of fixed or static sites, such as military bases, and housing areas, and reconstruction work sites.<sup>63</sup>

### *Significant Decline in Incidents Involving the Use of Force by State Department PSCs Since 2007*



Many congressional and agency-process improvements in the management of personal security contracts appear to have led to a decrease in incidents of the use of deadly force. In addition to the recommendations made by the Secretary of State's Panel on Personal Protective Services in Iraq, beneficial changes include the initiative to move more military forces into the Iraqi provinces, and the subsequent policy changes initiated by Congress and implemented by the Departments

of Defense and State. Another key improvement was the increased capability to conduct investigations. Other factors were the improved security situation in Iraq with the reduction in sectarian fighting and the start of the surge in troop levels.

For example, the State Department figures above show a significant reduction in the use

<sup>63</sup> Jennifer K. Elsea, Moshe Schwartz and Kennon H. Nakamura, CRS Report RL32419, Private Security Contractors in Iraq: Background, Legal Status, and Other Issues, August 25, 2008, 3. See also GAO Report 05-737, Rebuilding Iraq: Actions Needed to Improve Use of Private Security Providers, July 2005, 9.

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of deadly force incidents by State Department Worldwide Personal Protective Service (WPPS) contractor personnel after the Nisur Square incident in September 2007. The chart shows that the number of incidents began to decrease in October 2007, with a rate of reduction that held through May 2009.

The Commission will conduct further study to determine if the factors behind the significant decrease in deadly force incidents in Iraq carry over to the expanded missions in Afghanistan. Although the incidents that brought PSCs to public attention involved convoy and personal security services, during the Commission's trips to Iraq and Afghanistan we saw first hand how the use of PSCs in static security poses a potentially serious risk to the contingency mission as well. Therefore, all three security support activities will be a major focus for the Commission's further analysis.

***Departments of Defense and State  
Multiple-Award Security Contracts***

The Departments of Defense and State each established multiple-award indefinite delivery-indefinite quantity (IDIQ) contracts to acquire their private security support requirements. These are umbrella contracts where contractors compete to be awarded a contract. If they are selected, they can bid on task orders—specific missions—under the umbrella contract. Although the agencies use various other contracts to acquire security support services, these two IDIQs represent a large portion of total PSC contracting activity in Iraq and were the focus of our initial attention.

The Department of State's IDIQ, the Worldwide Personal Protective Service contract, is used to acquire a variety of service requirements such as providing private security details in Baghdad. The Department of Defense's IDIQ is called the Theater-Wide Internal Security-Services Contracts (TWISS), and it is used to acquire multiple security services such as the provision of static security for bases in Iraq.

**DoD THEATER-WIDE INTERNAL SECURITY SERVICES CONTRACT**

The TWISS contracts were awarded to expedite and simplify the contracting process for static security services in anticipation of increasing requirements. The contractor proposals for the TWISS IDIQ contracts were evaluated on five criteria: technical capability, past performance, past experience, Iraqi participation, and price. However, discussions with Defense Contract Management Agency (DCMA) personnel revealed that past-performance data were not being captured through a routine process, or being regularly reviewed before a contract award, resulting in undue weighting of other criteria. With the source selection of the upcoming TWISS II contractors, the TWISS contract awards will grow in size to a potential \$935 million.<sup>64</sup>

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<sup>64</sup> SIGIR Report 09-017, Need to Enhance Oversight of Theater-Wide Internal Security Services Contracts, April 24, 2009, 12.

The competitive task-order process incorporated into these IDIQs has worked to drive down the costs of security services. According to JCC-I/A officials, the average wage rate for a security guard decreased 26 percent between the time the contract was awarded and the award of the first task order. In the most recent task order competition, the rate decreased an additional 29 percent.<sup>65</sup> To the extent that TWISS PSC labor costs are being pushed down through the competitive process, competition is doing its job. However, if taken to the extreme, this process could have unintended consequences.

If the competitive task order process gives undue weight to proposed prices without proper consideration of other criteria, the selections could cause a “race to the bottom” and yield substandard contract performance. The government needs to ensure that security contractor source selection is truly based on best-value analysis. Evaluation criteria should promote selecting the contractor capable of providing the quality of service needed—especially the contractor’s capability to effectively support the guards it deploys. The Commission will continue to study this issue, focusing especially on the process used to make trade-offs among cost, capability, and past performance.

#### **DEPARTMENT OF STATE WORLDWIDE PERSONAL PROTECTIVE SERVICES CONTRACT**

The Department of State issued its first personal security contract in Iraq during the days of the Coalition Provisional Authority. The CPA had used Blackwater, but once the CPA ended in 2004, the Department of State extended the original CPA Blackwater contract to secure its rapidly growing diplomatic mission. The department replaced Blackwater’s CPA contract with the WPPS contract. The advent of the WPPS IDIQ contract expanded the list of PSCs eligible for protective security task orders to Blackwater (now Xe), DynCorp, and Triple Canopy.

#### ***Legal Accountability for Security Contractors Remains Unresolved in Iraq***

The response to the events of Nisur Square resulted in substantial progress in defining comprehensive oversight procedures and increased oversight necessary to manage PSCs in sensitive roles. What remains unresolved, however, is comprehensive civil and criminal accountability for a narrow class of PSCs—those who provide armed security support services under civilian-agency contracts.

Historically, PSCs operating outside the United States, have been held legally accountable under civil and criminal provisions of the host country’s organic law. This general rule is augmented by the Military Extraterritorial Jurisdiction Act (MEJA), which extended jurisdiction of the U.S. courts to certain offenses committed by contractors employed by or accompanying U.S. forces overseas. PSC personnel may be tried in federal court after being brought to the United States. MEJA jurisdiction applies only if

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<sup>65</sup> Ibid., 5.

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the employees have not been prosecuted under the host nation's legal system or under the Uniform Code of Military Justice.<sup>66</sup>

The MEJA statute has been used infrequently. From MEJA's enactment in 2000 through March 2008, DoD has referred 58 cases involving PSCs and other contractors to the Department of Justice. Federal prosecutors brought charges in 12 of those cases, and state prosecutors brought charges in one other case. Of those, eight resulted in a conviction and five await trial.<sup>67</sup>

American military personnel who commit criminal offenses in foreign countries are subject to the Uniform Code of Military Justice (UCMJ) and the courts-martial process. As of January 2007, civilian contractors working for the Department of Defense can be tried and punished for violations of the UCMJ. Section 552 of the 2007 National Defense Authorization Act added several key words to Article 2(a)(10) of the UCMJ, effectively expanding the jurisdiction of the UCMJ to allow military jurisdiction "in time of war or a contingency operation" over persons "serving with or accompanying an armed force in the field." Contingency operations are defined to include military operations "designated by the secretary of defense as operations in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force."<sup>68</sup>

In Iraq a unique situation developed as a result of Coalition Provisional Authority Order 17, promulgated in June 2004 by the CPA administrator. It provided military forces with legal immunity from Iraqi law and extended this immunity to American contractors working as private security contractors.<sup>69</sup> The legal vacuum created by CPA Order 17 was compounded by the rapidly deteriorating security situation in Iraq, which forced private security contractors to assume a more aggressive posture in order to complete their mission successfully. It was in this environment that the tragic shootings in Nisur Square took place.

#### SECURITY AGREEMENT CHANGES JURISDICTION OVER CONTRACTORS IN IRAQ

Effective January 1, 2009, the security agreement between the United States and Iraq

<sup>66</sup> 18 U.S.C. § 3261(a) and (b).

<sup>67</sup> Matthew Schwartzfeld, "Security Contractors Remain Outside the Law," *ProPublica*, August 15, 2008.

<sup>68</sup> 10 U.S.C. § 101(a)(13).

<sup>69</sup> CPA Order 17 states: "Unless provided otherwise herein, the MNF, the CPA, Foreign Liaison Missions, their Personnel, property, funds and assets, and all International Consultants shall be immune from Iraqi legal process."

removed the immunity previously provided by CPA Order 17.<sup>70</sup> Iraq now has primary jurisdiction over U.S. contractors, subcontractors, and their employees.

It is unclear whether MEJA would cover all employees of contractors working for entities other than DoD who commit crimes and offenses in the battle space. Coverage for contractor personnel under civilian agency contracts depends upon a finding that the individual's employment "relates to supporting the mission of the Department of Defense overseas." The test may become problematic when the contract is with another agency, such as the Department of State, that traditionally undertakes its own missions and whose objectives in a war zone may sometimes, but not always, be supporting DoD's mission. The Commission notes that in the pending criminal trials the courts will address these jurisdictional issues.

A Department of Justice press release stated that the 35-count indictment represents the first prosecution under MEJA to be filed against non-Defense Department private contractors.<sup>71</sup> The rulings in this case may clarify the nature of the accountability of private security contractors in the battle space.

## SECURITY CONTRACT MANAGEMENT ISSUES

The Commission identified a number of specific concerns with respect to private security contracts as a result of its visits to Iraq and Afghanistan. The following sections detail several of the issues that relate to the execution and oversight of PSC contracts.

### *Subject-Matter Expert Support Is Insufficient To Oversee Static Security Services*

There is a shortage of subject-matter experts (SMEs) to oversee security contracting in both Iraq and Afghanistan. During our recent visit to the Defense Contract Management Agency (DCMA) in Iraq, officials acknowledged that they have no resident security specialist or quality assurance representative (QAR) expertise, impeding proper oversight of the contracting officer's representatives (CORs) throughout the country.

The military occupational specialty with directly applicable skills is the security/military police. During the Commission's visits to Camps Hammer and Delta in Iraq, the security CORs said they had no comparable technical expertise in security. One COR was a combat medic and another was a crewman with a multiple-launch rocket system. Both said they did not sufficiently understand the complexities of managing base force-

<sup>70</sup> Agreement between the United States of America and the Republic of Iraq on the Withdrawal of United States Forces from Iraq and the Organization of Their Activities during Their Temporary Presence in Iraq, November 17, 2008. The agreement took effect January 1, 2009. The agreement is commonly referred to as the status of forces agreement (SOFA).

<sup>71</sup> U.S. Department of Justice Press Release 08-1068, December 8, 2008.

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protection contractors. The senior commander of Camp Hammer concurred with their self-assessment.

The base “mayors” and other leadership that we interviewed shared the concern that there was a lack of expertise in managing security contractors. During discussions with security-contractor CORs at Bagram Air Base, Camp Shank, and Camp Eggers in Afghanistan, only one of the three CORs interviewed had expertise as a military-police officer, while the others were field artillery and quartermaster officers. The apparent lack of qualified oversight of security contractors could impose a force-protection risk. The issue will be further examined in the coming months.

### *Ineffective Contractor Oversight Risks Contract Non Compliance*

The lack of skilled contract-oversight personnel and security SMEs has a big impact on the execution of the task orders awarded under the IDIQ contracts. The U.S. military has over 300 secured forward positions in Iraq, referred to as forward operating bases (FOBs), to support tactical operations in theater.



Third-country-national security guard  
at Camp Hammer in Iraq

Many large- and medium-size FOBs in Iraq use static security services provided by PSCs. Most of the PSCs for static security services in Iraq employ third-country nationals (TCNs) as the guard labor force at FOBs. They are usually hired through labor brokers in countries such as Uganda and Peru. Of all the PSCs the Commission interviewed, only one said they have in-country quality assurance employees that supervise the brokers to ensure proper vetting and evaluation of TCN performance.

Based on our interviews with the cognizant CORs, PSC representatives, and PSC site managers, and our personal observations at Camps Delta and Hammer, the Commission is concerned that some contractors in Iraq may be limiting training and not providing basic equipment. The adequacy of weapons and equipment, the number of vehicles available, and the type of night-vision equipment used are a few areas of performance that gave us cause for concern. The lack of trained and experienced government oversight personnel such as CORs and QARs greatly increases the risk of contractors failing to properly execute the terms and conditions of the contract. Poorly trained and ill-equipped contractor employees providing security for our operating bases put



American forces at increased risk of harm.

The Commission considers all areas of PSC contract compliance to require further review, and has referred these concerns to the JCC-I/A Commander. JCC-I/A followed up with a no-notice special-purpose audit of 50 sites and issued corrective-action requests to PSCs contractors at these sites.

### ***Inconsistent Rules of Engagement and Use of Force Impact Security Posture***

Strong force-protection measures are critical to ensuring the safety of encamped U.S. warfighters. Several military commanders in Iraq told the Commission they viewed the PSCs as “force enablers” that free up military service members for other mission requirements. The commanders generally support the use of PSC services as a necessary and useful tool of force augmentation. A recent SIGIR report confirmed the commanders’ perception that “the requirements for the task orders were based on the need to replace troops performing static security with private security contractors to make more troops available for combat operations.”<sup>72</sup> Examples:

- At Camp Taji, DoD issued a task order for over 900 personnel to free up 400 soldiers and to address deficiencies in existing site security.
- At Camp Bucca, DoD issued a task order for 417 personnel to free up approximately 350 soldiers for combat operations.
- At Camp Hammer, DoD issued a task order for 124 personnel to free up 102 soldiers for combat operations.<sup>73</sup>

To be effective, PSCs guarding sensitive installations must have a clear understanding of when and to what extent they may use their weapons. Base commanders explained to the Commission that the rules for using weapons were different for military and PSC personnel, and that the differences could compromise the safety of the installations.

Rules of engagement (ROE) define when, where, and against whom military force can be used by warfighters on the battlefield. Because PSCs are civilians, they do not follow the ROE. PSCs follow the Rules for the Use of Force (RUF), which provide clear guidance on when to escalate the PSCs’ use of force to an identified threat in order to deter or, if necessary, eliminate it. It is important that these RUF requirements be provided to the PSC personnel, and just as important that the PSC personnel receive appropriate instruction and oversight to ensure they apply the RUF properly.

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<sup>72</sup> SIGIR Report 09-017, Need to Enhance Oversight of Theater-Wide Internal Security Service Contracts, April 24, 2009, ii.

<sup>73</sup> Ibid., 6.

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The memorandum of agreement signed by the Departments of Defense and State in 2007 outlines the RUF in Iraq, and puts special priority on the escalation process. The escalation process proceeds from the use of non-deadly force through various methods and finally prescribes the limited conditions where the use of deadly force is authorized. Officials at Camp Hammer in Iraq told the Commission that the RUF restrictions on the use of deadly force have raised a concern that private security contractors may be unwilling to fire at potential threats for fear of losing their jobs. Representatives of the military units at bases PSCs protect reported their concern that a delayed response in the use of deadly force could have devastating consequences—that is, casualties or a significant loss of property.

Interviewees informed the Commission that military personnel operating under the conditions set out in the ROE are much more willing to quickly and decisively engage a threat and to use escalation procedures to neutralize the threat before lives or property are lost. Military personnel are authorized to hold individuals that pose a potential threat for up to 24 hours before turning them over to a competent local authority; however, PSCs are only authorized to repel intruders and report the incident to military authorities. This difference represents a procedural gap between the military and PSCs, one that could result in the escape of high-threat personnel and repeated attempts to breach perimeter security.

The interviewees at military bases in Iraq provided the Commission with information that indicates that PSCs may not be receiving sufficient training in the RUF to enable them to effectively determine, with confidence, when and how they should engage threats. This may lead to an inappropriate use and escalation of force as well as a failure to use force in a manner consistent with the circumstances of a situation. The Commission's initial exploration of this issue in Iraq shed a new light on concerns involving private security contractors' role in the battle space.

***Management of the Armed Contractor Oversight Directorate  
in Afghanistan Poses Potential Conflict of Interest***

Incidents involving PSCs in Iraq have highlighted the need for enhanced oversight. In response to these incidents, DoD has taken numerous steps to improve oversight and accountability of these contractors. One of the improvements in Iraq was establishing the Armed Contractor Oversight Division (ACOD) to serve as Multi-National Force-Iraq's principal staff element for oversight of PSCs, development of policies, and investigating and reporting incidents that involve the use of force.<sup>74</sup> ACOD was also tasked with broad oversight authority for DoD security contractors.

The story of ACOD in Afghanistan is very different and raises significant concerns about

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<sup>74</sup> In Iraq, ACOD is referred to as a division; in Afghanistan, it is referred to as a directorate.

contracting for certain functions generally performed by the government. In February 2009, ACOD in Afghanistan was established to implement DoD's armed contractor policies, procedures, processes, and liaison with PSCs throughout Afghanistan. Aegis, a British-owned firm, was selected as the support contractor.

DoD interviewees informed the Commission that sufficient military manpower and/or expertise did not exist in Afghanistan, and that contracting with Aegis allowed the Combined Joint Task Force (CJTF-101) to obtain expertise quickly. Aegis does not currently provide armed contractors in Afghanistan, and as the ACOD is currently structured, an Aegis contractor serves as the Deputy Director and has day-to-day responsibility for managing the directorate. Should they be awarded a PSC contract under the current structure, there would be a conflict of interest.

In addition, Aegis's work raises heightened inherently governmental concerns because the ACOD receives limited U.S. government supervision. Since its establishment, ACOD in Afghanistan has primarily been run by contractor personnel from Aegis. Aegis's responsibilities include working with the Afghan Ministry of Interior in investigations concerning PSC escalation-of-force incidents. CJTF-101 submitted an expedited request for four field-grade officers for ACOD; however, as of mid-May the request had yet to be approved and there were still no senior U.S. military officials assigned full-time to the directorate. A review of the Aegis contracting documents showed that without these military officers in place, Aegis is in a role of significant official responsibility in reviewing activities of other private security contractors.<sup>75</sup>

### ***Oversight Of Contractor Weapons Possession Requires Enhancement***

The process for arming contractors is regulated by the Defense Federal Acquisition Regulation Supplement (DFARS), specifically DFARS 252.225-7040, and DoD Instruction 3020.41. This clause is to be included in every security contract. The Commission recognizes these regulations as reflecting several years of evolving program concerns and lessons learned in Iraq.

While in Iraq, The Commission was briefed about the arming-certification process and the Army's problems in establishing it. In the early days of operations in Iraq, the process to evaluate applications for carrying weapons was chaotic and often ad hoc. The situation in which private security contractors had unauthorized weapons became so dangerous that U.S. Army Central Command and the area commanders began to use the arming-certification process as a control mechanism.

After several iterations, the basic process and necessary vetting requirements were

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<sup>75</sup> Contract W91B4N-09-C-5001, Section 1.57 of Aegis Performance Work Statement, Attachment 1, January 26, 2009.

## S E C U R I T Y

finally determined for all individuals seeking to carry a weapon.<sup>76</sup> These arming-certification documents are required to be carried at all times by all contractor employees carrying a weapon.

Commanders imposed discipline on the process by simply denying access to the base (and thus food and shelter) to any individuals without the arming authorization. It was apparently only in this fashion that some order was restored to the arming process in Iraq.

In Afghanistan, the process begins when the applicant meets seven requirements, after which the application is submitted to the Combined Joint Task Force 101 J3 (Operations), routed through the Judge Advocate General, and is ultimately approved by the Deputy Commanding General. The requirements are:

- a request for arming the civilian from the military command being supported;
- a demonstration that the contractor meets weapons qualifications;
- Law of Armed Conflict Certification;
- knowledge of the Rules for the Use of Force;
- DD Form 2760 (Qualification to Possess Firearms or Ammunition);
- an acknowledgement by the contractor of the risk of host-nation prosecution and of civil liability; and
- a letter acknowledging the contractor's understanding of the Rules for the Use of Force as opposed to the Rules of Engagement.<sup>77</sup>

In addition to DoD arming approval, armed contracting companies are legally required to be licensed by the Afghan Ministry of Interior, and contractually required to follow all Afghan laws. There is a licensing fee of \$120,000 per year for foreign companies and \$60,000 for Afghan companies. As of early April 2009, there were 39 licensed private security companies.

There are some concerns about the licensing process. Afghanistan has refused to issue any additional licenses and the ministry has also capped the number of employees under each licensee at 500, although exceptions are being granted for those that exceeded the cap prior to its implementation. Although contractors are contractually bound to follow all Afghan laws, proof that companies are licensed with the Ministry of the Interior is currently not required before arming approval is granted. However, the Principal Assistant Responsible for Contracting in Afghanistan (PARC-A) has expressed the intent to inquire into the status of the licensing of all Afghanistan security guard

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<sup>76</sup> U.S. Army Central Command message, Modification to USCENTCOM Civilian and Contractor Arming Policy and Delegation of Authority for Iraq and Afghanistan, November 2006.

<sup>77</sup> The requirements are set forth in DoD Instruction 3020.41.

contractors with the Afghan ministry.

The arming process in Afghanistan does not appear to be in accordance with the direction given in DFARS 252.225-7040 and DoDI 3020.41 that require the process to be submitted through the contracting officer. These requirements were established to create appropriate levels of oversight in the arming process. Furthermore, as of early April 2009, the ACOD in Afghanistan had no direct involvement in the arming process. The result is that the entities responsible for oversight in ensuring that private security contracts are following all regulations and contractual obligations may not be able to confirm that all armed contractors are appropriately authorized to carry weapons.

Our understanding of this issue is based on our knowledge of the development of the arming authorization process in Iraq, in-country interviews with the ACODs in Iraq and Afghanistan, and in-country interviews with the J3 (Operations) and the Judge Advocate General in Afghanistan. We examined the current process of arming contractors in Afghanistan and how it compared with that in Iraq. We also inquired if the arming process: follows DoD regulations and Afghanistan law, is adequate to ensure that contractor employees meet the requirements for arming, and applies proper checks on all contractors whose contracts stipulate that they are to be armed.

### ***Security Contractor Oversight in Afghanistan Does Not Reflect Lessons Learned In Iraq***

The Commission recognizes that different operating environments in Iraq and Afghanistan affect the way security services are provided and managed. For example, contract security work in Afghanistan is performed almost entirely by Afghan security guards, while in Iraq, the work has been performed mostly by third-country nationals and U.S. citizens.

Oversight of private security contractors is also conducted differently in Iraq and Afghanistan. In Iraq, there is significant coordination on PSC operations between the Departments of Defense and State, but very little in Afghanistan. The ACOD in Iraq, which goes back to 2007, is a mature organization led and staffed primarily by Defense Department personnel. The ACOD in Afghanistan, however, is a new organization developed only in February 2009 and is primarily staffed by Aegis contractor personnel.

The Commission will undertake further review of these differences in security-contractor management in the upcoming months.

**ON THE AGENDA**

The Commission's initial research confirmed that despite significant efforts to deal with these basic issues, many remain unaddressed, and that some lessons learned from the experience in Iraq are not being effectively adopted in Afghanistan. Over the course of the next year the Commission will address other key issues that arise concerning the use and management of private security contractors. We will:

- Examine the potential use of civilian employees of the Departments of Defense and State in lieu of contractor personnel in security roles, including the use of temporary appointments and reactivation of military reservists.
- Examine the sufficiency of current recruitment processes, background checks, and training to ensure the employment of responsible PSC personnel.
- Determine the extent to which PSCs should be held to the same standards and operational requirements as the military.
- Evaluate the extent to which U.S. citizens, host-country nationals, and third-country nationals are treated differently by various PSC employers, and if they are treated differently, whether such treatment is appropriate.
- Evaluate requirements necessary to implement any court rulings providing for legal accountability of PSCs in theater.
- Evaluate the processes to improve contract compliance with provisions governing PSC weapons distribution and recovery, contractor use of force, and host-nation laws.
- Evaluate alternative contracting methods for different security functions.

## Chapter 4

# Reconstruction

Reconstruction programs in contingency operations are wide-ranging, difficult to execute, expensive, and essential. Stability operations follow closely on the heels of war. Often they go together. Reconstruction encompasses infrastructure repair and construction, governance and institution building, democracy building, development of civil society and the rule of law, and training police and security forces to keep the peace.

All these call for unity of effort, a network of government and private-sector personnel, and the expenditure of vast sums of money. The Commission's work on the reconstruction aspect of wartime contracting will focus on the following issues:

- Reforming the planning, organization, coordinating, and oversight of reconstruction and development projects and programs to ensure unity of effort and obtain measurable outcomes resulting from different funding streams.
- Improving planning and oversight in Washington of all aspects of reconstruction, stabilization, and development in contingency operations—including all stakeholder entities such as the National Security Council, the Departments of Defense and State, the United States Agency for International Development, and the Departments of Agriculture and Treasury, among others. This also involves coordination and liaison with Congress, nongovernmental organizations, and the private sector.
- Developing sound metrics and specific guidelines for assessing capacity building and sustainability in reconstruction projects and programs, benefiting from lessons learned (especially from Iraq), and seeking to apply those requirements and guidelines across the range of funding programs, including U.S. government appropriations and UN and other international organization contributions.
- Making capacity building and sustainability of reconstruction projects and programs an integral part of contingency operations and the private-sector contracts that support them.
- Devoting greater attention to the role of human resources in contingency operations, both in numbers and in qualifications, including the field-level operations of Provincial Reconstruction Teams who work closely with the military. The goal is to relieve military personnel who now conduct reconstruction and development activities of a burden that should be carried by civilian personnel.

## RECONSTRUCTION

**MIXED RESULTS FROM OVER \$80 BILLION IN RECONSTRUCTION FUND SPENDING**

The U.S. Congress has appropriated over \$80 billion for reconstruction in Iraq and Afghanistan since 2001. Since 2003, reconstruction appropriations for Iraq amount to about \$51 billion.<sup>78</sup> For Afghanistan, the amounts were almost \$33 billion at the time of this report; they will increase substantially with the rapid ramp-up of operations in that country.<sup>79</sup> The second FY09 Supplemental Spending Bill would provide \$980 million for economic development programs and for strengthening governance and rule of law in Afghanistan, as well as \$3.6 billion to train and equip the Afghan security forces.

How well the billions of dollars spent so far on reconstruction were contracted for and how well contracts were executed, particularly in Iraq, has been assessed in hundreds of audits and reports by the agencies involved—the Departments of State and Defense, and the U.S. Agency for International Development (USAID)—as well as by the federal oversight community, particularly the Government Accountability Office (GAO) and the Special Inspector General for Iraq Reconstruction (SIGIR). The Commission is also conducting its own in-theater trips and reviews of contract documentation. The verdict is mixed at best. A July 2008 review by the Special Inspector General for Iraq Reconstruction (SIGIR) audits directorate identified broad, systemic management issues that impeded the execution of reconstruction programs:

- failure to anticipate the need to attract, develop, and retain qualified program and contract-management personnel;
- lack of an integrated management structure with clear lines of authority, interagency coordination, and program accountability;
- need to work closely with host-country government officials and other groups to develop reconstruction programs and projects that will be accepted and maintained; and
- difficulty of implementing reconstruction programs in an insecure environment.<sup>80</sup>

According to SIGIR, the prevalence of these issues in Iraq “contributed significantly to reduced program effectiveness and increased the potential for fraud, waste, and abuse.”

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<sup>78</sup> According to SIGIR, “Six years since the start of efforts to provide humanitarian assistance and to rebuild and restore Iraq’s services and infrastructure, more than \$139 billion has been made available through three main sources: Iraqi funding: \$71.01 billion; U.S. funding: \$51.00 billion; International funding: \$17.79 billion.” SIGIR, Quarterly Report to Congress, April 30, 2009, 26.

<sup>79</sup> According to SIGAR, “in addition to U.S.-appropriated funds, the international community has pledged approximately \$25 billion towards Afghanistan reconstruction.” SIGAR, Quarterly Report to the United States Congress, April 10, 2009, i-ii.

<sup>80</sup> SIGIR, *Hard Lessons: The Iraq Reconstruction Experience* (Washington, DC, 2009), 353-4.



Understanding them is “critical to avoid repeating them in the future.”<sup>81</sup>

In carrying out its work in the area of reconstruction, the Commission will be mindful that there may be a life cycle in contingency operations. Some early reconstruction measures can help in bringing an end to conflict. But attempting to do too much too early invites waste and may not build sustainable capacity. Major reconstruction, stabilization, and development in a contingency environment is hard enough, let alone when fighting a war at the same time.

### NEED FOR STABILIZATION WITH RECONSTRUCTION

The scope of the Commission’s work in reconstruction contracting includes reconstruction and stabilization initiatives in conflict and post-conflict areas in Iraq and Afghanistan. Defense Department Directive 3000.05 of November 2005 declares that stability operations are a core U.S. military mission, and the Reconstruction and Stabilization Civilian Management Act of 2008 mandates that all federal agencies develop interagency plans and strategies for reconstruction and stabilization operations.<sup>82</sup> The Department of State was assigned responsibility for taking the lead in this planning effort. Reconstruction planners require sufficient funding and proper staffing support to carry out this role.

Reconstruction extends beyond building infrastructure—roads and transportation, communications, water, power generation and energy, and health care—to “soft” projects that include strengthening civil society and socio-economic development, governmental institutional building, building local-community and provincial governance, and sponsoring rule of law, gender equality, and democratization programs. Because the international community and host nations recognize that without basic security even the best of “hard” reconstruction projects and programs may founder, reconstruction in Iraq and Afghanistan entails training and developing police and security forces.

We must learn from Iraq to make proposals for Afghanistan. Our legislative mandate calls for an analysis of overall policy, procedures, organizational alignment, and interagency coordination. Our focus—all the more important when large sums of money are soon to be obligated for Afghanistan—will be on developing creative and implementable solutions that remedy the conditions that permitted mismanagement and weak leadership and coordination in the past.

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<sup>81</sup> SIGIR Report 08-020, Key Recurring Management Issues Identified in Audits of Iraq Reconstruction Efforts, July 27, 2008, ii.

<sup>82</sup> S. 3001, Duncan Hunter National Defense Authorization Act for 2009, Title XVI: Reconstruction and Stabilization Civilian Management.

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**UP TO \$5 BILLION OF WASTE IN IRAQ RECONSTRUCTION**

Reconstruction contracting in Iraq was in large part shaped in the early days of the Coalition Provisional Authority (CPA). During this period, the CPA and those agencies working on its behalf turned to large indefinite delivery, indefinite quantity (IDIQ) contracts for rehabilitating Iraq's debilitated industrial and public works infrastructure. Contractors such as Bechtel, KBR, Parsons, Fluor, and Perini collectively received billions of dollars in U.S. and Iraqi funds to support reconstruction of the oil sector, healthcare system, water and sewage system, and the electricity sector.

For some of the largest contracts, the CPA dealt with its severe shortfalls of personnel by contracting out even parts of the process of putting together these enormous contracts. Because many of the projects were "design-build," the contractors who decided the details of what to build were the same ones who built it.

As the oversight community has repeatedly noted, the projects to be delivered under these major contracts have been beset by delays, cost overruns, and disturbing instances of substandard construction. SIGIR estimated at the Commission's February 2009 hearing that \$3 billion to \$5 billion of Iraq construction appropriations had been wasted, not including billions more in Iraqi funds for which the United States had been trustee. As the Commission's work progresses, we will develop a more definitive assessment of the lessons learned from reconstruction contracting in Iraq, keeping in view the expanding efforts in Afghanistan.

**CAPACITY BUILDING AND SUSTAINABILITY**

The rush to "do something quickly" in contingency environments can give short shrift to local buy-in and maintenance, ultimately undermining sustainability. As one senior official said, there was a "real risk of huge multi-million-dollar projects sitting alone, non-operative, because we had not put the same focus on sustainability as we have on building it," a problem depicted in many SIGIR reports.<sup>83</sup> All too often, contractors designed and built under the supervision of the U.S. Army Corps of Engineers what the contractors and the Corps were familiar with building, not the different type and scale of building that had the best chance of taking root in Iraq's soil, as well as its social and governmental institutions.

At the Commission's February hearing, SIGIR confirmed that the failure of sustainability could turn out to be the biggest source of waste in reconstruction contracting. For many months, efforts at a systematic turnover of reconstruction projects remained frustrated because the State Department could not arrive at a transition agreement with Iraqi officials. The Commission learned that this agreement was reached only in April 2009. It

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<sup>83</sup> SIGIR, *Hard Lessons: The Iraq Reconstruction Experience* (Washington, DC, 2009), 262.

remains to be seen whether transition now shifts into a smooth pattern or further barriers arise which will put at risk the continuing quality and even the viability of the projects at stake.

## CAPACITY-BUILDING OVERSIGHT AND METRICS

In Afghanistan, although officials are aware of lessons learned, programs need more rigorous examination and activities to ensure sustainability. This includes sound metrics and oversight from the beginning of projects through completion. Everyone involved—including the Defense Department (through projects funded by the Commander's Emergency Response Program), the Department of State, USAID, the U.S. Army Corps of Engineers, and international donors—must be part of this process.

Reconstruction contracts aimed at developing the capacity of the Iraqi and Afghan governments have suffered from a lack of oversight and inappropriate measurements of project success. SIGIR found that some major capacity-building contracts overseen by USAID in Iraq were not managed at the outset to make sure that the relationship between contract costs and actual program outcomes could be ascertained.<sup>84</sup> An example is the case of two contracts, with a total value of close to \$600 million, awarded by USAID to the Research Triangle Institute (RTI) between 2003 and 2005 for developing local governance. At first, costs were identified only at an aggregate level. Not until April 2007 did RTI reports begin to identify costs for discrete activities. Thus meaningful judgments could not be made about the cost effectiveness of the contract and whether local governance in Iraq had improved.

Reports by the USAID inspector general noted that the agency neglected to enforce its own requirements for receiving progress reports and other information needed to determine the outcomes of these contracts.<sup>85</sup> Moreover, the agency assigned only one contracting officer's representative during the life of most of the contracts.

Lacking enough contract oversight personnel and the metrics necessary to assess progress, the U.S. government cannot really know if a particular capacity-building program is an effective expenditure of reconstruction funds. Without more concrete measures of contract success, the U.S. government's reconstruction strategy will not fit the realities on the ground.

Capacity building is also an important part of the U.S. strategy to promote economic

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<sup>84</sup> SIGIR 09-003, Cost, Outcome, and Oversight of Local Governance Program Contracts with Research Triangle Institute, October 21, 2008, i-iv.

<sup>85</sup> USAID OIG Report E-267-06-003-P, Audit of USAID/Iraq's Local Governance Activities, July 10, 2006, 5; USAID OIG Report E-267-07-007-P, Audit of USAID/Iraq's Local Governance Activities, July 31, 2007, 4.

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activity in Afghanistan. In February 2007, USAID awarded BearingPoint, Inc. a \$218.6 million capacity-development program contract aimed at developing the capacity of institutions within Afghan society through training and technical assistance for private- and public-sector managers.<sup>86</sup>

Like the RTI contract in Iraq, the BearingPoint contract lacked detailed plans for assessing the success of the program until about 14 months into the life of the contract. The agency and the contractor spent much time trying to define program objectives and activities after the contract had been awarded. The USAID inspector general reported that although the agency and contractor worked to define objectives, significant funds were spent on contractor activities that did not directly contribute to the capacity-development program objectives. For example, in Afghanistan, USAID decided to have the contractor pay the salaries of employees of Afghanistan's ministry of education, which would have cost about \$11.1 million over a two-year period, even though the contractor had no detailed plan for training ministry staff. Looking ahead, more attention will be needed to train and mentor Afghan professionals as U.S. government programs and their funding increase during the buildup in Afghanistan.

U.S. government civilian resources in Afghanistan are inadequate, as the President noted in a March 27, 2009, strategy announcement. He said the United States "will devote significantly more resources to the civilian efforts in both Afghanistan and Pakistan" and that he "will submit a budget that includes indispensable investments in our State Department and foreign assistance programs. These investments relieve the burden on our troops and contribute directly to our safety and security."<sup>87</sup>

A major Washington initiative now under way could greatly augment the civilian presence throughout Afghanistan at Provincial Reconstruction Teams (PRTs) and elsewhere. USAID and other agencies are struggling to do this quickly.

## LACK OF INTERNATIONAL COORDINATION

The United States has played a dominant role in contingency operations in Iraq, Afghanistan and beyond, allocating significant resources and funding. Still, the role of other nations and the international community is important in achieving unity and synergy of efforts.

The Commission devoted much of its first hearing to an exploration of the problems in coordination throughout Iraq reconstruction, with a factual foundation established by

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<sup>86</sup> USAID OIG Report 5-306-08-012-P, Audit of USAID/Afghanistan's Capacity Development Program, 1.

<sup>87</sup> [www.whitehouse.gov/the\\_press\\_office/Whats-New-in-the-Strategy-for-Afghanistan-and-Pakistan](http://www.whitehouse.gov/the_press_office/Whats-New-in-the-Strategy-for-Afghanistan-and-Pakistan).

SIGIR's two-year study, *Hard Lessons*. The hearing made all too clear that wartime reconstruction, stabilization, and development must be better coordinated among U.S. agencies and receive more attention during the funding and implementation of contingency operations. The U.S. government also needs an acknowledged central point where its own vast expenditures and operations in support of wartime reconstruction, stabilization, and development can be best coordinated in cooperation with other governments and international entities.

The Department of Defense, Department of State, and USAID will remain the major players, but a central node should be responsible for ensuring good coordination and synergies with non-U.S. entities involved in reconstruction efforts. Questions to witnesses at the February 2009 hearing elicited two proposals for where such a coordinating point might reside: the State Department's Coordinator for Reconstruction and Stabilization, or the National Security Council in the Executive Office of the President.

In theaters such as Iraq and Afghanistan, military commanders and U.S. Chiefs of Mission are responsible for ensuring maximum coordination and cooperation with allies and other international entities, bringing to the attention of Washington—to a designated point—issues to be addressed and resolved at the higher levels in foreign capitals.

To leverage funding and attain synergy of effort, effective international coordination and cooperation in wartime and post-conflict reconstruction, stabilization, and development is imperative. These international entities include allied and other governments, the UN and other international organizations, the multilateral development banks and international financial institutions, leading nongovernmental organizations, the international private sector, and the far-flung network of contractors and subcontractors associated with them.

In Iraq, poor international coordination made for duplication and waste. Various reports and assessments—including that of the Iraq Study Group—reveal this starkly. The current Administration has indicated that it will rely on the UN to play a greater coordinating role in overall reconstruction and development in Afghanistan, where the record so far is marked by uneven coordination and disparate priorities among the lead nations involved in reconstruction and development.

The United States is the dominant party in funding and operational support, including military and civilian resources, of post-conflict reconstruction, stabilization, and development. Meshing this more effectively with money and resources from allies and other international entities will leverage U.S. government funding and reduce wasteful overlaps in projects and programs. These initiatives should begin at the front end, for

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example in donors' conferences, and keep up as projects and programs are coordinated on the ground.

### COMMANDER'S EMERGENCY RESPONSE PROGRAM

The Commander's Emergency Response Program (CERP) in Iraq and Afghanistan is seen as a prized asset for U.S. military forces as well as a powerful tool in carrying out reconstruction, stabilization, and development projects in the midst of wartime conditions. The acceleration of the program in 2006 has been credited with fostering the perception by Iraqis that the American military is serving them.<sup>88</sup> Indeed, the CERP standard operating procedures manual is aptly entitled *Money as a Weapons System* (MAAWS). The value of CERP is that it is nimble and quick—in contrast to other slow and cumbersome funding streams and the seemingly interminable process through which projects are approved and get off the ground. That said, however, CERP projects and programs also need proper planning, coordination, and oversight.

CERP guidelines are clearly stated by command authorities, but a measure of subjective judgment comes in to play in choosing and recommending projects that local communities want and need. According to the DoD Financial Management Regulation, the Commander of the U.S. Army Central Command (CENTCOM) approves all CERP projects in Afghanistan greater than \$2 million. The Commander of the Combined Joint Task Force in Afghanistan has the authority to approve projects less than or equal to \$2 million. The commander is to approve on an exception basis any essential individual CERP projects of \$500,000 or more given that the intent is for small-scale projects. Projects of \$50,000 or more are to be coordinated with Provincial Reconstruction Development Committees (PRDCs), and in fact projects from \$200,000 to \$2 million in Afghanistan must be approved by the regional command in conjunction with assessments by a CERP board. In Iraq, this process is slightly different.<sup>89</sup>

CERP funds are used extensively for road building and infrastructure in Afghanistan—projects considered vital in view of the rugged topography and in combating the Taliban and other insurgents. Officers in theater understand this point well. One told the Commission, "Asphalt is ammunition." Another said, "Where the road ends, the insurgency begins."

"Where the road ends, the insurgency begins."

Since 2003 just over \$3.5 billion in U.S. funding has been appropriated for CERP use in Iraq. In Afghanistan, overall funding through fiscal year 2009 is approximately \$1.4

<sup>88</sup> SIGIR, *Hard Lessons: The Iraq Reconstruction Experience* (Washington, DC, 2009), 279-291.

<sup>89</sup> DoD 7000.14-R, volume 12, chapter 27, Commander's Emergency Response Program (CERP), January 2009.

billion.<sup>90</sup> The military's CERP projects and corresponding "quick-impact" initiatives by State and USAID have made a significant contribution to reconstruction, stabilization, and development.

As is true across the board in reconstruction, there are questions of project viability and sustainability. The degree to which CERP-funded projects are properly coordinated with USAID and host-country ministries and provinces in order to maximize capacity building and avoid cross-purpose efforts is also in question. That lack of coordination is a serious problem that needs to be addressed.

Nor has the CERP program been immune from substantive allegations of fraud and corruption. The Commission will review representative CERP contracts and evaluate amounts allocated, how the money was used, oversight, and capacity-building outcomes. Recent events indicate that officials of some American allies supporting the reconstruction of Iraq have subverted CERP for their own gain.

In April 2009, three South Korean military officers were convicted of extortion and bribery in connection with a \$70 million U.S.-funded reconstruction program in northern Iraq.<sup>91</sup> These crimes raise serious concerns about oversight of reconstruction contracts funded by the U.S. government and managed by allied nations.

Concerns apply to both Iraq and Afghanistan, as the U.S. has relied on allies operating in both nations to oversee portions of the reconstruction contracting process. The Commission will further study the impact of such abuses and develop lessons learned to address oversight problems of U.S.-funded contracts involving international allies and partner nations—whose role remains highly relevant to reconstruction and development efforts in Afghanistan.

Much of CERP activity in Afghanistan is linked to the operations of Provincial Reconstruction Teams (PRTs), which anchor projects by obtaining Afghan buy-in and bolstering prospects for sustainability. Support of CERP projects needs to be coordinated with all of the government entities involved and the military, in addition to being closely integrated with approved provincial development plans. Otherwise, CERP might be used for a project or program that does not mesh with other agencies' efforts, or has no buy-in from host-country nationals.

Senior command staff in Afghanistan meet regularly on CERP projects and track them for timely action, with most items processed for approval within two weeks. But there

<sup>90</sup> SIGAR, Quarterly Report to the United States Congress, April 30, 2009, 36-37.

<sup>91</sup> James Glanz, Eric Schmitt, and Choe Sang-hun, Three Koreans Convicted of Bribery in Iraq, New York Times, May 4, 2009.

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are also problems of turnover among the stakeholders, including unit deployments of personnel serving on PRTs and gaps in overall staffing, as well as a lack of adequate project-management records. In addition, there are few subject-matter experts, such as contract specialists and experts in finance. The Commission will look more closely into PRT and CERP issues.

**PROBLEMS OF PROVINCIAL RECONSTRUCTION TEAMS**

The Commission believes that a serious shortage of U.S. government civilians in Afghanistan is all too likely to trigger heavy reliance on contractors in both the short term and the long run. At current U.S. civilian staffing levels, there are about three civilians at each PRT in Afghanistan. The rest of the 75-85 personnel at a typical PRT are military. The civilians come from the Department of State, USAID and, in some cases, the Department of Agriculture. Some are contractor personnel. In reality, civilian government personnel are not always available at a given PRT.

For now, the U.S. Army Corps of Engineers (USACE) and contractors fill part of this void. But it is hard to maintain continuity. Civilian personnel usually have one-year assignments, including regular leave for rest and relaxation and temporary duties away from the PRT.

PRTs operate in Iraq and Afghanistan, though in different configurations and circumstances. They are a local presence to provide assistance through projects that could not be planned in or implemented from the capitals. Their role is to improve stability by increasing host-country capacity for governance, economic development, and the delivery of public services such as health care and security by local governments and communities.

PRT operations in Iraq and Afghanistan serve an important, indeed necessary function in any significant and longer-term U.S. government involvement in contingency operations in those countries. Iraq's 18 provinces have 14 regular PRTs and four Provincial Support Teams, as well as 10 smaller PRTs embedded with Brigade Combat Teams who work with city and local governments in their areas.

The U.S. Embassy in Baghdad oversees PRT efforts through its Office of Provincial Affairs, headed by an official at the ambassadorial level. The PRT presence and operational scope in Iraq will be affected by the redeployment and withdrawal of U.S. troops, as well as decisions about their future by the Iraqi government.

As part of a major Administration initiative now under way to expand considerably the numbers and activities of U.S. government civilians in the field in Afghanistan, the State Department plans to add over 50 new positions at PRTs in 2009, growing this to a total of over 250 positions by spring 2010.



Officials at State and elsewhere have underscored the challenge of fielding so many new personnel and, in addition to the regular assignment process, will use the special hiring provisions under Title 5 of the U.S. Code and personal-service contracts. They are also looking into using military reservists in these assignments, a course that may be difficult considering the many deployment demands already made on the Reserves. If substantial personnel gaps persist, State and other agencies may look to contracting as part of the planned increase in the U.S. civilian presence in Afghanistan. The Commission is skeptical that long-term personnel needs can be met without new incentives and will provide recommendations on this issue.

In Afghanistan, all 26 PRTs are embedded under the operational command of the International Security Assistance Force. The United States serves as lead nation for 12 PRTs, and the International Security Assistance Force and NATO nations serve for the others. State and the U.S. Embassy in Kabul are planning to expand their field presence in Afghanistan, through the establishment of several more PRTs and the provision of resources at the district level. Newly created provincial governance and development offices focused on economic and development issues will also supplement the work of the PRTs.

Adding resources and improving coordination will go far to avoid “development fratricide” (duplication and working at cross-purposes) both among and between U.S. agencies, as well as among the United States and international organizations. The alternative may be overdependence on contractors and organizational disarray.

## COORDINATION AND COSTS OF USAID PROGRAMS

The U.S. Agency for International Development has received approximately \$9 billion for reconstruction activities in Afghanistan from 2001 through the present (\$1.7 billion for FY2008). Some two-thirds of all funding has gone into USAID’s Economic Support Fund for a variety of programs. In comparison, Defense has been allocated \$18.5 billion in Afghanistan reconstruction funding, and State \$4.6 billion. Other agencies, such as the Departments of Agriculture, Justice, and Treasury, have also received funding for program activities in Afghanistan.

USAID at present has around 130 employees in Iraq to manage and oversee the work of 4,000 implementing personnel. In Afghanistan, it has some 250 personnel, out of 350 authorized, overseeing approximately 10,000 implementers.

But USAID, like other civilian agencies, is challenged when it comes to augmenting its civilian government presence in Afghanistan, as called for by the President. Like other U.S. civilian agencies and the military, USAID also needs more subject-matter experts to

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coordinate with nongovernmental organizations and oversee grantees and contractors.

The USAID effort in Afghanistan suffers from poor coordination with ongoing operations of the Defense Department and other entities, particularly at the provincial and local levels and in the PRTs located in these areas.

According to a January 2009 report by USAID's Office of the Inspector General, USAID's obligations in Afghanistan for fiscal years 2002 through the first quarter of 2009 totaled over \$7.1 billion. The inspector general found that "the most frequent types of recommendations in the audits have involved inadequate contract oversight or activities management (68 percent), issues with security that prevented the mission from being accomplished (24 percent), data integrity or quality (24 percent), and contractor performance that needed improvement (20 percent)."<sup>92</sup> The USAID inspector general supports oversight of Afghanistan work from its office in Manila, with 14 auditors and two investigators and expects to establish a satellite office with two employees in Kabul in the summer of 2009. The Commission believes it is important that oversight and accountability be increased commensurate with the major expansion of funding and projects for Afghanistan, as outlined in the strategy set out by the President on March 27, 2009. Keeping apprised of this will be part of the Commission's continuing work.

In Iraq, USAID obligations for fiscal years 2002 through the first quarter of 2009 totaled over \$7.2 billion. The agency's inspector general found that the greatest obstacle to USAID and its inspector general activities in Iraq was unquestionably the lack of security. Beyond security issues, their audits found that "the most frequent problem affecting USAID development efforts in Iraq involves inadequate contract oversight or project management (29 percent)." Other factors impeding the agency's "ability to achieve its goals are noncompliance with contract procedures (20 percent), insufficient internal controls (7 percent), and faulty or incomplete performance data (7 percent)."<sup>93</sup> The USAID inspector general has seven auditors and two investigators who oversee programs and operations in Baghdad.

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<sup>92</sup> USAID OIG Booklet on Afghanistan, January 2009, Executive Summary.

<sup>93</sup> USAID OIG Booklet on Iraq, January 2009, Executive Summary.

"USAID's programmed contractor support costs appear relatively high. ... USAID contract data from June 2008 shows that ... of the original \$130 million [funding for agency programs], approximately \$89.6 million would be available for grants and subcontracts. This equates to a programmed support cost of \$.45 for each \$1.00 in grants awarded. The contractor also pays subcontractors an average of 8% of the dollar value of the grants to disburse grant funds to the Iraqi recipients.

... USAID provided data that shows that its budgeted support costs for the entire grant are now estimated to be approximately \$.61 per \$1.00 in grants disbursed as of January 20, 2009."<sup>94</sup>

These numbers raise questions of effectiveness and waste. The Commission will look at support costs to gain a clearer sense of what percentage is appropriate for these types of reconstruction projects.

### VISIBILITY OF SECURITY COSTS IN CONTRACTS

One of the greatest contributors to inflated reconstruction contract costs has been the need to provide security in the dangerous reconstruction environment. According to a data survey of major reconstruction contractors conducted by SIGIR in January 2007, contractor security costs ranged from a low of 7.6 percent to a high of 16.7 percent of total contract costs. The average for all contractors was 12.5 percent.<sup>95</sup>

This trend has persisted in Iraq. SIGIR has continued to report that underestimated security costs have significant consequences. They drive up the total cost of reconstruction projects and can also lead to delays in project completion.<sup>96</sup> Aside from the obvious effects of poor security conditions on the ground, another major factor in the growth of reconstruction contract security costs has been the lack of recognition that these costs need to be tracked.<sup>97</sup> Although comprehensive data on Afghanistan are not yet available, the challenging security conditions there also call for improved tracking of security cost information.

A mandatory contract line-item breakout of security costs would help identify and

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<sup>94</sup> SIGIR Report 09-011, Opportunities to Improve Management of the Quick Response Fund, January 29, 2009, 7.

<sup>95</sup> SIGIR Report 6-044, Fact Sheet on Major U.S. Contractors' Security Costs Related to Iraq Relief and Reconstruction Fund Contracting Activities, January 30, 2007, 2.

<sup>96</sup> SIGIR Report 08-004, Outcome, Cost, and Oversight of Reconstruction of Taji Military Base and Baghdad Recruiting Center, January 15, 2008; SIGIR Report 09-008, Cost, Outcome, and Oversight of Iraq Oil Reconstruction Contract with Kellogg Brown & Root Services, Inc., January 13, 2009.

<sup>97</sup> SIGIR Report 09-005, Agencies Need Improved Financial Data Reporting for Private Security Contractors, October 30, 2008, iii.

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possibly control reconstruction contracting costs related to security. To the extent that security costs are acknowledged and monitored from the inception of a reconstruction contract, the ability of the responsible contracting officers to deal with rising security costs would be enhanced. When used on an aggregate basis, this information could bring realism about security costs into the bidding process and help assess the risk of poor performance by contractors.

Visibility on security related costs might also help managers determine if additional costs might outweigh the benefits of initiating projects until the risks can better be controlled, and would thus be a key element in the process making a “go” or “no go” decision on projects.

**ON THE AGENDA**

Reconstruction and stability operations are necessary and complementary in wartime. The Commission will look at contracts for building infrastructure and “soft” programs to strengthen societal institutions and promote democracy. We will also assess the oversight, management, and effectiveness of these programs. Items on our agenda are:

- Assess the procedures for contractor accountability in reconstruction such as use of accurate and timely contract performance evaluations, terminations, and other contract sanctions.
- Assess the role of contractors in the Afghanistan reconstruction initiatives (including security training and “soft” developmental initiatives).
- Examine the appropriateness of various contract types used for reconstruction and development projects.
- Assess the effectiveness and the need for additional oversight for quick-impact CERP projects.
- Evaluate the effectiveness of capacity-building reconstruction projects, and determine the extent to which stakeholder collaboration is an integral part of acquisition planning, contract performance, and project sustainability.
- Assess the feasibility of establishing an interdepartmental entity for planning and coordinating reconstruction projects in contingency operations.
- Assess the oversight, management, and effectiveness of governance and democratization contracts.
- Determine how reconstruction efforts can be more effectively coordinated among U.S. agencies and with the host nation, foreign governments, international organizations, and nongovernmental organizations.

## Chapter 5

# On the Agenda

In the preceding chapters we referred to a number of activities in progress or slated for study in the near future. They are logical next steps to verify the Commission's observations and to explore in greater depth the issues selected for attention in our legislative mandate.

This chapter describes our study plan for the nine focus areas listed in the Executive Summary and discussed throughout the report:

- leadership, culture, and accountability within the key agencies responsible for contingency operations;
- staffing and training of the federal acquisition workforce;
- pre-deployment planning for contractor support and integration;
- policies related to inherently governmental functions;
- the process for defining contract requirements;
- contract pricing and competition;
- contractor performance and cost effectiveness;
- visibility into and accountability of subcontractors—in particular, foreign subcontractors; and
- the Iraq drawdown and the Afghanistan buildup.

Investigating such a wide swath of issues involves dividing the work into logical groupings that have evolved in our program-management approach and study methodology. For purposes of the Interim Report, they are aligned with the chapter subject areas used in this report. Specific tasks described below may, of course, be revised or augmented as our work proceeds.

## MANAGEMENT AND ACCOUNTABILITY

### *Human Capital*

- Analyze the various agencies' efforts to develop a contingency contracting corps and the status of efforts to implement the inter-governmental corps authorized in Section 870 of the 2009 National Defense Authorization Act.
- Assess methods of remedying understaffing of contract oversight and audit functions, and assess the effectiveness of current efforts to estimate the optimum numbers and types of acquisition personnel.
- Evaluate barriers to deploying civilian employees in theater to support wartime contingency operations through directed assignments, adjustment of tour lengths, and compensation incentives.

***Knowledge And Information Systems***

- Assess what shortcomings in government knowledge and information systems undermine the accomplishment of the Iraq drawdown and the build-up in Afghanistan.
- Assess the process for collecting, verifying, sharing, and disseminating contingency contracting lessons learned by the Departments of Defense and State and by USAID.

***Policy And Process***

- Consider what processes and controls should be in place to manage decisions and assess risks of outsourcing logistics and security support services that may be considered inherently governmental functions.
- Assess the inherently governmental issues raised when contractors oversee other contingency contractors.
- Analyze the appropriateness of reliance on contracts for services if the failure to perform would endanger mission success.
- Assess the need for changes in laws, regulations, and contract requirements to improve visibility of subcontractor performance during a contingency operation.
- Determine the circumstances in which the United States should give contract award preferences to host-country firms in the U.S. Army Central Command area of responsibility.
- Assess the desirability of creating and implementing a single government-wide Contingency Federal Acquisition Regulation.
- Address the question of when sustainment contracting begins and contingency contracting ends.
- Determine the problems that arise from contingency contract requirements having been poorly defined and not definitized in a timely and effective manner.
- Investigate issues surrounding the lack of adequate competition and determine methods to improve the extent of competition to satisfy contingency contract requirements.

***Organizational Leadership And Alignment***

- Identify and assess the effectiveness of contracting lines of authority and organizational alignment of the acquisition function in the U.S. Army Central Command area of responsibility.
- Explore the need to revise the roles and responsibilities for contingency contract management, and identify the training and tools necessary to accomplish the contract management mission.
- Identify political, institutional, funding, and other barriers to implementing reforms to contingency contracting.
- Identify the issues and methods to improve cooperation, communication, and

collaboration among key stakeholders in determining contractor support requirements as part of military exercises for planning future contingency operations.

- Determine why prior recommendations from the audit community have not fixed significant contingency contracting problems.

### ***Financial Accountability***

- Identify and evaluate opportunities for the improvement of contingency contractors' financial, accounting, and administration systems, thereby reducing the risk of waste, fraud, and abuse.
- Consider how best to improve accountability in contingency contractor performance, including affirmative consideration of performance in source selection, award fee determinations, and contractor performance evaluation.
- Evaluate methods for improved analysis of contractor cost proposals, including determinations of the reasonableness of estimated contingency contract costs and adequacy of business systems.
- Identify methods for improving in-theater contractor oversight.
- Determine if the Department of State and the U.S. Agency for International Development are obtaining effective contract audit service support.

### **LOGISTICS**

- Evaluate techniques for reducing service and system-support contract costs, including improved independent cost estimates, enhanced competition, and improved contractor oversight.
- Assess potential alternatives to current logistics-contractor support, including the possible establishment of an installations-management command to manage facilities once a contingency operation stabilizes.
- Examine the role of logistics contractors in support of the Iraq drawdown and Afghanistan buildup.
- Study the management of U.S. government property in theater, with special attention to the efficient disposition of property affected by the ongoing Iraq drawdown and Afghanistan buildup.
- Identify reasons for the slow transition from LOGCAP III to IV.
- Analyze the effectiveness of the logistics planning process for future contingency operations.
- Examine the various types of contingency funding appropriations and their impact on logistics support decision-making.
- Assess recurrent or systemic problems with LOGCAP contractors' accounting or quality assurance.

## ON THE AGENDA

**SECURITY**

- Examine the potential use of civilian employees of the Departments of Defense and State in lieu of contractor personnel in security roles, including the use of temporary appointments and reactivation of military reservists.
- Examine the sufficiency of current recruitment processes, background checks, and training to ensure the employment of responsible PSC personnel.
- Determine the extent to which PSCs should be held to the same standards and operational requirements as the military.
- Evaluate the extent to which U.S. citizens, host-country nationals, and third-country nationals are treated differently by various PSC employers, and if they are treated differently, whether such treatment is appropriate.
- Evaluate requirements necessary to implement any court rulings providing for legal accountability of PSCs in theater.
- Evaluate the processes to improve contract compliance with provisions governing PSC weapons distribution and recovery, contractor use of force, and host-nation laws.
- Evaluate alternative contracting methods for different security functions.

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- Assess the procedures for contractor accountability in reconstruction such as use of accurate and timely contract performance evaluations, terminations, and other contract sanctions.
- Assess the role of contractors in the Afghanistan reconstruction initiatives (including security training and “soft” developmental initiatives);
- Examine the appropriateness of various contract types used for reconstruction and development projects.
- Assess the effectiveness and the need for additional oversight for quick-impact CERP projects.
- Evaluate the effectiveness of capacity-building reconstruction projects, and determine the extent to which stakeholder collaboration is an integral part of acquisition planning, contract performance, and project sustainability.
- Assess the feasibility of establishing an interdepartmental entity for planning and coordinating reconstruction projects in contingency operations.
- Assess the oversight, management, and effectiveness of governance and democratization contracts.
- Determine how reconstruction efforts can be more effectively coordinated among U.S. agencies and with the host nation, foreign governments, international organizations, and nongovernmental organizations.



**SUMMARY**

The Commission will now address these and other areas still to be identified. We will make more trips to Iraq and Afghanistan to interview key government and industry participants in the contracting process. We will conduct several hearings—two are planned for summer 2009—in areas such as management of government property, reconstruction, security, government accountability, human capital management, and policy and process.

We will conduct a thorough review of all of our many ongoing projects—listed in the Methodology appendix—adjusted for initial research results in this report, and consider current Commission priorities in light of events and agencies’ progress in addressing their challenges. Based on that evaluation, we will refine our projects to ensure we research, study, and report on the most critical issues, given time and resource constraints, to ensure our Final Report reflects the intent of the legislation.

All this work is integral to fulfilling the Commission’s vision: analyzing the risks to effective wartime contracting, delineating options for top-to-bottom improvement, and making recommendations for system reforms that are real and not merely cosmetic. We will also speak to the barriers of politics, bureaucratic inertia, fiscal constraints, and institutional culture that stand in the way of implementing reforms. Above all, we will seek to generate reform that ensures oversight and accountability while respecting the needs of our warfighters, serving the interests of American taxpayers, and supporting the vital national-security goals of the United States.

## Appendix A

# Authorizing Statute

### NATIONAL DEFENSE AUTHORIZATION ACT (NDAA) FOR FISCAL YEAR 2008: COMMISSION ON WARTIME CONTRACTING IN IRAQ AND AFGHANISTAN

[110th Congress, Public Law 110-181, Section 841 (January 28, 2008)]

...

DIVISION A-DEPARTMENT OF DEFENSE AUTHORIZATIONS TITLE VIII-  
ACQUISITION POLICY, ACQUISITION MANAGEMENT, AND RELATED MATTERS  
Subtitle D-Accountability in Contracting

...

SEC. 841. COMMISSION ON WARTIME CONTRACTING IN IRAQ AND  
AFGHANISTAN.

(a) ESTABLISHMENT.-There is hereby established a commission to be known as the  
"Commission on Wartime Contracting" (in this section referred to as the "Commission").

(b) MEMBERSHIP MATTERS.-

(1) MEMBERSHIP.-The Commission shall be composed of 8 members, as follows:

(A) 2 members shall be appointed by the majority leader of the Senate, in  
consultation with the Chairmen of the Committee on Armed Services, the  
Committee on Homeland Security and Governmental Affairs, and the  
Committee on Foreign Relations of the Senate.

(B) 2 members shall be appointed by the Speaker of the House of  
Representatives, in consultation with the Chairmen of the Committee on Armed  
Services, the Committee on Oversight and Government Reform, and the  
Committee on Foreign Affairs of the House of Representatives.

(C) 1 member shall be appointed by the minority leader of the Senate, in  
consultation with the Ranking Minority Members of the Committee on Armed  
Services, the Committee on Homeland Security and Governmental Affairs, and  
the Committee on Foreign Relations of the Senate.

(D) 1 member shall be appointed by the minority leader of the House of  
Representatives, in consultation with the Ranking Minority Member of the  
Committee on Armed Services, the Committee on Oversight and Government  
Reform, and the Committee on Foreign Affairs of the House of Representatives.

(E) 2 members shall be appointed by the President, in consultation with the  
Secretary of Defense and the Secretary of State.

(2) DEADLINE FOR APPOINTMENTS.-All appointments to the Commission shall be  
made not later than 120 days after the date of the enactment of this Act.

(3) CO-CHAIRMEN.-The Commission shall have two cochairmen, including-

## APPENDIX A

- (A) a co-chairman who shall be a member of the Commission jointly designated by the Speaker of the House of Representatives and the majority leader of the Senate; and
  - (B) a co-chairman who shall be a member of the Commission jointly designated by the minority leader of the House of Representatives and the minority leader of the Senate.
- (4) VACANCY.-In the event of a vacancy in a seat on the Commission, the individual appointed to fill the vacant seat shall be-
- (A) appointed by the same officer (or the officer's successor) who made the appointment to the seat when the Commission was first established; and
  - (B) if the officer in subparagraph (A) is of a party other than the party of the officer who made the appointment to the seat when the Commission was first established, chosen in consultation with the senior officers in the Senate and the House of Representatives of the party which is the party of the officer who made the appointment to the seat when the Commission was first established.
- (c) DUTIES.- (1) GENERAL DUTIES.-The Commission shall study the following matters:
- (A) Federal agency contracting for the reconstruction of Iraq and Afghanistan.
  - (B) Federal agency contracting for the logistical support of coalition forces operating in Iraq and Afghanistan.
  - (C) Federal agency contracting for the performance of security functions in Iraq and Afghanistan.
- (2) SCOPE OF CONTRACTING COVERED.-The Federal agency contracting covered by this subsection includes contracts entered into both in the United States and abroad for the performance of activities described in paragraph (1).
- (3) PARTICULAR DUTIES.-In carrying out the study under this subsection, the Commission shall assess-
- (A) the extent of the reliance of the Federal Government on contractors to perform functions (including security functions) in Iraq and Afghanistan and the impact of this reliance on the achievement of the objectives of the United States;
  - (B) the performance exhibited by Federal contractors for the contracts under review pursuant to paragraph (1), and the mechanisms used to evaluate contractor performance;
  - (C) the extent of waste, fraud, and abuse under such contracts;
  - (D) the extent to which those responsible for such waste, fraud, and abuse have been held financially or legally accountable;
  - (E) the appropriateness of the organizational structure, policies, practices, and resources of the Department of Defense and the Department of State for handling program management and contracting for the programs and contracts under review pursuant to paragraph (1);
  - (F) the extent to which contractors under such contracts have engaged in the misuse of force or have used force in a manner inconsistent with the objectives of the operational field commander; and

## AUTHORIZING STATUTE

(G) the extent of potential violations of the laws of war, Federal law, or other applicable legal standards by contractors under such contracts.

(d) REPORTS.-

(1) INTERIM REPORT.-On March 1, 2009, the Commission shall submit to Congress an interim report on the study carried out under subsection (c), including the results and findings of the study as of that date.

(2) OTHER REPORTS.-The Commission may from time to time submit to Congress such other reports on the study carried out under subsection (c) as the Commission considers appropriate.

(3) FINAL REPORT.-Not later than two years after the date of the appointment of all of the members of the Commission under subsection (b), the Commission shall submit to Congress a final report on the study carried out under subsection (c). The report shall-

(A) include the findings of the Commission;

(B) identify lessons learned relating to contingency program management and contingency contracting covered by the study; and

(C) include specific recommendations for improvements to be made in-

(i) the process for defining requirements and developing statements of work for contracts in contingency contracting;

(ii) the process for awarding contracts and task or delivery orders in contingency contracting;

(iii) the process for contingency program management;

(iv) the process for identifying, addressing, and providing accountability for waste, fraud, and abuse in contingency contracting;

(v) the process for determining which functions are inherently governmental and which functions are appropriate for performance by contractors in a contingency operation (including during combat operations), especially whether providing security in an area of combat operations is inherently governmental;

(vi) the organizational structure, resources, policies, and practices of the Department of Defense and the Department of State for performing contingency program management; and

(vii) the process by which roles and responsibilities with respect to management and oversight of contracts in contingency contracting are distributed among the various departments and agencies of the Federal Government, and interagency coordination and communication mechanisms associated with contingency contracting.

(e) OTHER POWERS AND AUTHORITIES.-

(1) HEARINGS AND EVIDENCE.-The Commission or, on the authority of the Commission, any portion thereof, may, for the purpose of carrying out this section-

## APPENDIX A

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths (provided that the quorum for a hearing shall be three members of the Commission); and  
 (B) provide for the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents; as the Commission, or such portion thereof, may determine advisable.

(2) INABILITY TO OBTAIN DOCUMENTS OR TESTIMONY.-In the event the Commission is unable to obtain testimony or documents needed to conduct its work, the Commission shall notify the committees of Congress of jurisdiction and appropriate investigative authorities.

(3) ACCESS TO INFORMATION.-The Commission may secure directly from the Department of Defense and any other department or agency of the Federal Government any information or assistance that the Commission considers necessary to enable the Commission to carry out the requirements of this section. Upon request of the Commission, the head of such department or agency shall furnish such information expeditiously to the Commission. Whenever information or assistance requested by the Commission is unreasonably refused or not provided, the Commission shall report the circumstances to Congress without delay.

(4) PERSONNEL.-The Commission shall have the authorities provided in section 3161 of title 5, United States Code, and shall be subject to the conditions set forth in such section, except to the extent that such conditions would be inconsistent with the requirements of this section.

(5) DETAILEES.-Any employee of the Federal Government may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(6) SECURITY CLEARANCES.-The appropriate departments or agencies of the Federal Government shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this section without the appropriate security clearances.

(7) VIOLATIONS OF LAW.-

(A) REFERRAL TO ATTORNEY GENERAL.-The Commission may refer to the Attorney General any violation or potential violation of law identified by the Commission in carrying out its duties under this section.

(B) REPORTS ON RESULTS OF REFERRAL.-The Attorney General shall submit to Congress a report on each prosecution, conviction, resolution, or other disposition that results from a referral made under this subparagraph.

(f) TERMINATION.-The Commission shall terminate on the date that is 60 days after the date of the submittal of its final report under subsection (d)(3).

## AUTHORIZING STATUTE

(g) DEFINITIONS.-In this section:

(1) CONTINGENCY CONTRACTING.-The term "contingency contracting" means all stages of the process of acquiring property or services during a contingency operation.

(2) CONTINGENCY OPERATION.-The term "contingency operation" has the meaning given that term in section 101 of title 10, United States Code.

(3) CONTINGENCY PROGRAM MANAGEMENT.-The term "contingency program management" means the process of planning, organizing, staffing, controlling, and leading the combined efforts of participating personnel for the management of a specific acquisition program or programs during contingency operations.



## NOTES

1. Although Section 841 of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Public Law 110-181) is the operative text for the Commission on Wartime Contracting, other provisions of the NDAA of 2008 will be relevant to its work (e.g., Section 842 with regard to Inspectors General audits, sections 1221 and 1229), as well as other laws and future legislation, e.g., NDAA FY2009 (S.3001).

2. As noted, Public Law 110-181 was signed on January 28, 2008. The Commission's work, however, did not begin at that time. Official appointments of Commission members were not complete until summer. Office space and equipment were not provided until the fall. Processing of most staff hires was not complete until winter. The net result is that this Interim Report reflects less than six months of full-strength operations.

## **Appendix B**

# **Commission Milestones**

Section 841 of the National Defense Authorization Act for Fiscal Year 2008, which created the Commission on Wartime Contracting, requires it to assess a number of factors related to wartime contracting, including the extent of waste, fraud, abuse, and mismanagement of wartime contracts, and the impact of governmental reliance on contractors on achieving United States policy objectives. The Commission has the authority to hold hearings, obtain information, and refer to the Attorney General any violation or potential violation of law as it carries out its duties—an authority already exercised.

Many studies have examined the vast expenditures on contingency contracting to determine how effective and efficient they were; the extent of waste, fraud, and abuse; and whether taxpayer dollars were put to good use. Ideas for reforming parts of a system widely seen as dysfunctional have been proposed and, in some cases, implemented to varying degrees of success. Guided by its broad legislative mandate to study federal-agency contracting for reconstruction, logistical, and security support of coalition forces in Iraq and Afghanistan, this Commission's investigation will be the most comprehensive and bipartisan examination of these issues yet undertaken.

In addition to this Interim Report, the Commission is authorized to submit other reports to Congress on its studies from time to time, as appropriate. A Final Report to be submitted to Congress will present all Commission findings, identify lessons learned about contingency program management and contracting, and put forward specific recommendations for improving aspects of contingency contracting. These include addressing, among other issues, the processes for defining requirements and developing scopes of work; awarding contracts and task orders; rooting out and providing accountability for waste, fraud, and abuse; and determining which functions are inherently governmental and which may be performed by contractors, and especially whether the provision of security in an area of combat operations is inherently governmental.

## **GETTING STARTED**

The Commission's authorizing language became law on January 28, 2008. Eight Commission members were named by July 2008, although one resigned in the fall and was replaced on April 1, 2009, when the House Minority Leader appointed former Connecticut Congressman Christopher H. Shays to the post. During the fall and winter of 2008, the Commission obtained office space, added staff, obtained technical support, and developed a plan of work for carrying out our mission. By the end of January 2009, the ranks of professional and administrative staff approached 40, enabling major

## COMMISSION MILESTONES

research projects to begin.

A website was set up: [www.wartimecontracting.gov](http://www.wartimecontracting.gov). It has expanded to become a comprehensive source of public information about Commission activities, providing transcripts of hearings, press releases, and other resources. Plans are under way for further improvements to enable more public access to an expanded store of information about the Commission and about contingency contracting. Operating procedures were established for the office, including the electronic file structure, a correspondence-control plan, a project-management plan, a study model, and interview protocols. An ethics handbook was written and the staff has completed ethics training adapted from the course developed for Senate employees.

During September and October of 2008, Commissioners received briefings from more than 25 key organizations and programs throughout the government, including the major entities housed in the Departments of State and Defense, and the U.S. Agency for International Development (USAID), as well as the Special Inspector General for Iraq (SIGIR), the Special Inspector General for Afghanistan (SIGAR), the Congressional Budget Office, and the Government Accountability Office (GAO). They also met with leading scholars and writers on contracting issues and with contractors—a group of private security contractors in September 2008, and Kellogg, Brown & Root (KBR) in March 2009. KBR is the prime contractor for the Logistics Civil Augmentation Program (LOGCAP), the Army's multi-billion-dollar contract for worldwide support of military operations.

The Commission has two Co-Chairs, one appointed by Democratic officials, the other by Republican officials. Commissioner Michael J. Thibault was jointly designated Co-Chair by the Majority Leader of the Senate and the Speaker of the House. On April 30, 2009, the Senate and House Minority Leaders designated Commissioner Christopher H. Shays as the second Co-Chair. For a number of months, when the position of second Co-Chair was vacant, Commissioner Grant S. Green shouldered heavy responsibilities as Acting Co-Chair.

## STAFFING

The Commission has recruited a diverse group of professional staff members, all of whom are federal employees. Some are detailed from agencies including the Army, the Air Force, the State Department, the Department of Defense Inspector General's office, the U.S. Agency for International Development, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the U.S. Army Corps of Engineers. Others have had careers in the military, in service as congressional staff, and in agencies including GAO, the State Department, and SIGIR, as well as in the private sector. They bring to our work hundreds of years of combined experience in contracting, executive leadership, federal acquisition and procurement, financial management, data



## APPENDIX B

analysis, hands-on auditing, contracting law and administration, diplomacy, and criminal investigation.

## HEARINGS

Hearings are a critical part of the Commission's strategy to get to truth, identify key areas for additional research, and decide how issues can be addressed. The Commission's first public hearing took place on February 2, 2009, in the Caucus Room of the U.S. Senate, a historic venue which was the site of many hearings by the Truman Committee more than a half-century ago. The topic was lessons learned about wartime contracting by the inspectors general overseeing contingency contracting in Iraq and Afghanistan. The hearing featured testimony from the offices of the Inspector General for Iraq Reconstruction (SIGIR) and from the Inspectors General of the



Senators McCaskill, Webb, and Collins at Commission's February hearing



Representative Tierney at Commission's May hearing

Department of Defense, the Department of State, and the U.S. Agency for International Development. Also testifying were Senators instrumental in creating the Commission and supporting its mandate: Senators Claire McCaskill (D-MO) and James Webb (D-VA), the original Senate sponsors of the legislation establishing the Commission, and Senator Susan Collins (R-ME), the ranking member of the Homeland Security Committee.

The Commission's second hearing, held on May 4, 2009, in the Rayburn House Office Building, focused on the multi-billion-dollar logistics contracts, known as LOGCAP, that supports U.S. military operations overseas. Rep. John F. Tierney of Massachusetts, chairman of the House Subcommittee on National Security and Foreign Affairs, offered welcoming remarks prior to the testimony of witnesses including officials of the Army Contracting Command, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the Army's LOGCAP Program Office.

LOGCAP, the Logistics Civil Augmentation Program, comprises two concurrent contracts: LOGCAP III, awarded in December 2001 and the contract under which the bulk of work in theater is still being done, and LOGCAP IV, awarded in April 2008.

## COMMISSION MILESTONES

Work is being phased over from LOGCAP III to IV. According to the Army, total 10-year spending under the contract could reach \$150 billion for services including delivering food, water, fuel, and spare parts; operating dining and laundry facilities; providing housing and sanitation; moving personnel and supplies; engineering and constructing projects; and maintaining facilities.

Hearing documents and transcripts are posted at  
[www.wartimecontracting.gov/hearings.htm](http://www.wartimecontracting.gov/hearings.htm)

The Commission intends to hold hearings on the issues of security, reconstruction, and management and accountability. Hearing plans also include a session to gather contractor-community observations and responses to issues addressed in the Commission's work. As work proceeds, topics for additional hearings are expected to surface. For example, after the second trip in theater, the Commission is considering a hearing on the Iraq drawdown and transition to Afghanistan, with a focus on accountability and planning for the disposition of government property. The challenge of efficiently moving, handing over, selling, or scrapping more than 600,000 lines of U.S. government and military property is huge, plans are incomplete, and the transition is imminent. The issue needs prompt attention.

## COMMISSION TRAVEL IN THEATER

There is no substitute for in-theater experience to understand the full dimensions of wartime contracting issues and how they play out in the field. Much can be done with stateside interviews and computerized research, but onsite briefings, observation, and interviews with men and women on the ground, including high-level diplomats, commanders, non-commissioned officers, and contractors make the research data come alive and generate new information. Observational data can be more valid than what one is told in conversation with or in writings by individuals who may be protecting their own interests.

Commissioners and staff have made two trips to Iraq and Afghanistan to inspect work sites, review documents, conduct interviews, and receive briefings from officials on the ground. The first trip took place in early December 2008, with an itinerary that included briefings by the Defense Contract Audit Agency, the U.S. Agency for International Development (USAID), and the U.S. Embassies in Baghdad and Kabul, as well as reviews of construction of the Baghdad Police College and task orders for construction and repair of the Bagram Air Base in Afghanistan.

A 10-day investigative trip in early April 2009 comprised a 15-person group of Commissioners and staff that broke into two teams: one team visited Iraq, the other Afghanistan. They conducted more than 125 meetings with employees of the Departments of Defense and State, USAID, the military, and employees of contractors

## APPENDIX B

working on a range of projects from building schools, hospitals, and water-treatment plants to providing food and other services at military bases and protecting diplomatic personnel. Team members were able to meet and talk with a representative group of men and women working in theater at all levels, from high-ranking diplomats to onsite construction managers and camp commanders, as well as contracting officer's representatives, who serve as the front line of contract management and oversight.

In addition to meetings in Baghdad and Kabul, the teams visited projects in the provinces and military forward operating bases, including Camps Hammer, Victory, and Delta in Iraq, and Camps Phoenix, Eggers, and Shank, as well as Bagram Air Base in Afghanistan. A focus of the trip was private security contracting. Teams observed private-security operations and interviewed contractors, including DynCorp, Blackwater, Sabre International, and Triple Canopy about their compliance with standard operating procedures. Commissioners and staff also met with the major LOGCAP contractor, KBR, and the LOGCAP management-support contractor, Serco. What they found is partially captured in this report and will be reflected in future reports and used to plan future trips.



**The full Commission at the May hearing**

## Appendix C

# Methodology

The Commission's legislative mandate charges it to study a range of issues surrounding wartime contingency contracting in Iraq and Afghanistan, focusing on the logistical support of coalition forces, the performance of security functions, and reconstruction. Our mandate also calls on us to examine core issues in contracting by the U.S. government, including:

- waste, fraud, and abuse;
- conformance to federal law and legal standards by contractors;
- reliance on contractors and its implications for inherently governmental functions;
- misuse of force;
- accountability for financial and legal infractions; and
- ensuring proper performance by contractors.

Management areas to be evaluated include:

- the organizational structures of the Departments of Defense and State and the U.S. Agency for International Development and communications among them;
- policies, practices, and resources devoted to program management and contracting;
- roles and responsibilities in and among agencies to manage and oversee contracts;
- the process for defining requirements and statements of work;
- the process for awarding contracts and task orders; and
- ways in which lessons learned are documented and disseminated.

At the time the Commission began its work, a sizable body of material—over 500 audits, studies, and reports—already existed on contingency contracting in the Iraq and Afghanistan conflicts and issues. We developed a disciplined process to capture the results of these audits and reports and use them to support our mandated work.

## INTERVIEWS

Our review of these audits and reports allowed us to identify key government, contractor, and oversight organizations we thought it productive to interview. We received initial briefings from more than 25 groups, including organizations and agencies involved in contingency contracting as well as federal audit agencies. In

## APPENDIX C

addition to dozens of interviews stateside over a period of several months, Commission members and staff conducted more than 125 meetings and interviews in theater during a two-week visit in April 2009. The Commission also held two hearings. One was devoted to lessons learned by the Special Inspector General for Iraq Reconstruction and the inspectors general of the Department of Defense, Department of State, and USAID.

A second hearing, on the Logistics Civil Augmentation Program (LOGCAP)—the Army's standing contract for worldwide support of military operations—included representatives from the LOGCAP Program Office, Army Contracting Command, Defense Contract Management Agency, and Defense Contract Audit Agency.

A complete list of the members of academia, industry, government, and the military that have met with the Commissioners and staff is on the Commission Web site.

### DEVELOPING AND PLANNING PROGRAM ACTIVITIES

Based on a literature review, early interviews, and briefings we developed a set of 22 research projects that reflect the major activities of our study. These projects are very specific in their objectives, coverage, activities to be undertaken, schedule and responsibilities. They focus on six areas:

- logistics
- security
- reconstruction
- government organizational structure, workforce, and workload management
- contractor accountability and management
- policy and process

## METHODOLOGY

Commission Focus Area	Specific Research Projects
Logistics	Extent to which logistics should be contracted
	Management strategies of successful logistics programs
	Effectiveness of efforts to prevent waste, fraud, and abuse
	Problems with and dependence on one large LOGCAP contractor
Security	Private security contractor (PSC) contract performance and compliance across agencies using PSCs
	What happens when different agencies with different missions and resources contract for security
	Legal issues of contracting out security functions
Reconstruction	Organizational, resource, and contracting issues in reconstruction
	Effect of favoring local-national sub-contractors
	Effect of security costs on reconstruction efforts
	Capacity of agencies that oversee reconstruction in terms of contracting officers and oversight personnel
Government Organizational Structure, Workforce, and Workload Management	Effectiveness of the staffing, training, and management of contracting officer's representatives (CORs)
	Applying lessons learned and integrating federal contingency workforce programs
	Efficiency issues of the flow of contracting authority, reporting lines, and organization structure
Contractor Accountability and Management	Effectiveness of Defense Contract Audit Agency and Defense Contract Management Agency oversight
	Adequacy of key data in Southwest Asia contracts
	Compliance with key financial and payment laws and regulations
	Adequacy of the award fee process
	Adequacy of prime-contractor awards and management of subcontracts
Policy and Process	Issues of applying lessons learned in Iraq to Afghanistan
	Adequacy of interagency program coordination
	Policy on contracting out wartime activities

## APPENDIX C

For each project, we developed the issues to be studied, activities to be undertaken, and a schedule. For each of these 22 research projects, we developed key research questions, assumptions, a study approach (methodology), literature reviewed, additional data sources, interviewees and agencies, quality-assurance protocols, schedule, and resources.

In some instances, our initial literature reviews and interviews addressed many of the issues we targeted for analysis. In others, substantial additional research will be required. These 22 projects may be modified and some perhaps superseded or supplemented as the studies proceed.

Finally, to augment our research and findings analysis, we will invite representatives from agencies with a stake in contingency contracts to meet periodically and review and discuss tentative findings. The Commission believes that this collaborative process will go a long way to gain community buy-in and identify barriers to successful implementation and their solutions.

**FLASH REPORTS**

Commissioners may occasionally arrive at findings so compelling that they call for immediate attention. These might be practices, procedures, and failures to observe basic contracting regulations—even blatant instances of apparent waste, fraud, or abuse—so egregious that they call out for timely investigation, referral, and remedial action. In such cases, Commissioners take their concerns privately to officials in the office of the inspector general of the agency or agencies responsible for overseeing the activities in question.

From time to time, the Commission's research and investigations into specific questions of widespread concern may elicit findings and conclusions that unequivocally support recommendations for timely reform. In that event, we may choose to address the question promptly by preparing flash reports for dissemination to the Congress, the oversight agencies, and the public. To date, we have referred several matters to the appropriate oversight agencies for their review and disposition.

## Appendix D

# Commission Staff Roster

Jessica Baker	Curt Malthouse
<i>Program Analyst</i>	<i>DoD Inspector General Detailee</i>
Captain Tina Benivegna, USAF	Gary Matthews
<i>DCMA Detailee</i>	<i>Team Lead, Professional Staff Member</i>
Richard Beutel	Robert Melby
<i>General Counsel</i>	<i>Professional Staff Member</i>
Anthony Box	Clark Mercer
<i>Professional Staff Member</i>	<i>Program Analyst</i>
John Brosnan	Myron Myers
<i>Senior Counsel</i>	<i>Professional Staff Member</i>
Jeffrey Brand	Gregory Picur
<i>Director of Operations</i>	<i>USAID Detailee</i>
Rosemary Byrd	Brendan Orsinger
<i>Team Lead, Professional Staff Member</i>	<i>Program Analyst</i>
Tara Chapman	Denis Orsinger
<i>Research Analyst</i>	<i>Professional Staff Member</i>
Marquittia Coleman	Karen Sorber
<i>Executive Assistant</i>	<i>Study Director</i>
Gray Coyner	Steven Sternlieb
<i>Team Lead, Professional Staff Member</i>	<i>Team Lead, Professional Staff Member</i>
Robert Curtis	Ronald Straight
<i>Professional Staff Member</i>	<i>Professional Staff Member</i>
Stephen Dillard	Jazather Thompson
<i>Team Lead, Professional Staff Member</i>	<i>Office Manager</i>
Marian Harvey	Jo-Ann Thompson
<i>Professional Staff Member</i>	<i>Administration Assistant</i>
Donna Heivilin	Susan Yarbrough
<i>Team Lead, Professional Staff Member</i>	<i>USACE Detailee</i>
Clark Irwin	Adam Weaver
<i>Director of Communications</i>	<i>Staff Attorney</i>
David Johnson	Barbara Wolfson
<i>DCAA Detailee</i>	<i>Senior Editor</i>
Parker Laite	Colonel Kelvin Woods, USA
<i>Program Analyst</i>	<i>Army Detailee</i>
Zen McManus	
<i>Program Analyst</i>	



## Commissioners

### **MICHAEL J. THIBAUT**, *Co-Chair (Democrat)*

Appointed by Senate Majority Leader Reid and Speaker of the House Pelosi. Navigant Consulting, Director, 2007-2008; Unisys Federal Systems, Chief Compliance Officer, 2005-2006; Defense Contract Audit Agency (DCAA), Deputy Director, 1973-2005. B.A., Southern Oregon; M.A., Central Michigan, 1984; CPA.

### **CHRISTOPHER H. SHAYS**, *Co-Chair (Republican)*

Appointed by House Minority Leader Boehner. Member, U.S. House of Representatives, for Connecticut's 4th District, 1987-2009. Formerly Chairman, then Ranking Member, Subcommittee on National Security and Foreign Affairs of the Oversight and Government Reform Committee; Member, Committees on Homeland Security and Financial Services. Representative, Connecticut General Assembly, 1975-1987. Peace Corps volunteer, 1968-1970. B.A., Principia College; M.B.A., M.P.A., New York University.

### **CLARK KENT ERVIN**

Appointed by Speaker of the House Pelosi. The Aspen Institute, Director, Homeland Security Program, 2005-present; Clear Path Technologies, L.L.C., Member, Board of Advisors, 2008; CNN, National Security Analyst, 2005-present; Inspector General, United States Department of Homeland Security, 2003-2005; Inspector General, United States Department of State, 2001-2003; Deputy Attorney General and General Counsel of Texas, 1999-2001; Assistant Secretary of State of Texas, 1995-1999; Locke, Liddell, & Sapp, L.L.P., Lawyer, 1993-1995; Associate Policy Director, White House Office of National Service, 1989-1991; Vinson & Elkins, L.L.P., Lawyer, 1985-1989. A.B., Harvard; M.A., Oxford; J.D., Harvard.

### **GRANT S. GREEN**

Appointed by President George W. Bush. Global Marketing and Development Solutions Inc., Chairman, 2005-present, Chairman and President, 1996-2000; "America Supports You Fund," President, 2007-present; Under Secretary of State for Management, 2001-2005; major consulting and marketing company, Executive Vice President and Chief Operating Officer, 1989-1996; Assistant Secretary of Defense, 1988-1989; Special Assistant to the President, Executive Secretary for the National Security Council, 1986-1988; Sears World Trade, senior management positions, 1983-1986. B.A., Arkansas; M.S., George Washington, 1979. Retired colonel, U.S. Army. Formerly Acting Co-Chair.

### **LINDA J. GUSTITUS**

Appointed by Senate Majority Leader Reid. Office of U.S. Senator Carl Levin, Chief of Staff, 2002; U.S. Senate Governmental Affairs Committee, Subcommittee on Oversight of Government Management; Subcommittee on Nuclear Nonproliferation and Federal Services; Permanent Subcommittee on Investigations, Democratic Staff Director, 1980-2001; Office of the Honorable Carl Levin, Legislative Assistant, 1979; U.S. Department of Justice, Civil Division, Trial Attorney, 1977-1979; Cook County Illinois Assistant State's Attorney, Prosecutor, 1976-1977. B.A., Oberlin; J.D., Wayne State.

### **ROBERT J. HENKE**

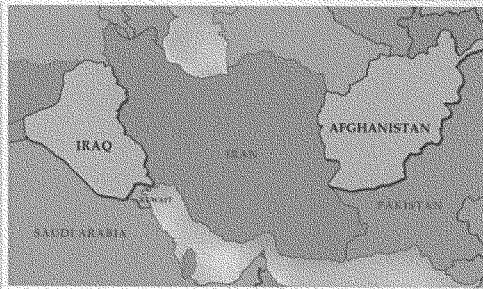
Appointed by Senate Minority Leader McConnell. Assistant Secretary for Management (Chief Financial Officer and Chief Acquisition Officer), Department of Veterans Affairs, 2005-2009; previously, Principal Deputy Under Secretary of Defense (Comptroller); Professional Staff Member, U.S. Senate Committee on Appropriations, Subcommittee on Defense; Presidential Management Intern with the Office of the Assistant Secretary of the Navy (Financial Management & Comptroller); General Electric Company; U.S. Navy. B.A., Notre Dame; M.P.A., Syracuse.

### **CHARLES TIEFER**

Appointed by Senate Majority Leader Reid. University of Baltimore School of Law, Professor of Law, 1995-present (government contracts, contracts and legislation); U.S. House of Representatives, General Counsel (Acting) 1993-1994; Solicitor and Deputy General Counsel, 1984-1995. U.S. Senate, Assistant Senate Legal Counsel, 1979-84; U.S. Department of Justice, Civil Rights Division, Trial Attorney, 1978-1979; U.S. Court of Appeals for the D.C. Circuit, Law Clerk, 1977-1978. B.A., Columbia; J.D., Harvard.

### **DOV S. ZAKHEIM**

Appointed by President George W. Bush. Booz Allen Hamilton, 2004-present, Vice President, 2004-2008; Under Secretary of Defense (Comptroller) and Chief Financial Officer, 2001-2004 (coordinator of DOD civilian programs in Afghanistan, 2002-2004); System Planning Corporation, Corporate Vice President, and SPC International Corp., Chief Executive Officer, 1987-2001; Deputy Under Secretary of Defense (Planning and Resources), 1985-1987; Department of Defense, various Senior Executive Service positions, 1981-1985; Congressional Budget Office, 1975-81. B.A., Columbia; D. Phil., Oxford.



## AT WHAT COST?

### Contingency Contracting in Iraq and Afghanistan

Since 2001, the United States has placed unprecedented reliance on contractors to support logistics, security, and reconstruction efforts related to its military operations in Iraq and Afghanistan.

Contractors provide vital support. They feed troops, maintain facilities and equipment, transport cargo, wash clothes, and even provide security guards for bases. Unfortunately, billions of taxpayer dollars spent on wartime contracting have been lost to waste, fraud, and abuse. Widespread problems involve federal agencies, the military, and the contractor community. The failures undermine U.S. policy objectives, waste taxpayer dollars, and threaten the well-being of American troops.

In 2008, Congress established the independent, bipartisan Commission on Wartime Contracting in Iraq and Afghanistan to research, investigate, make findings, and offer recommendations to improve contract management in contingency operations.

This interim report to Congress discusses the Commission's work to date and sets the stage for the final report to follow.

#### Commission on Wartime Contracting In Iraq and Afghanistan

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Mr. THIBAUT. Our report identifies many longstanding issues for awarding, managing, and auditing the vital contracts that support logistics, security, and reconstruction missions. These include shortages in the Federal acquisition work force, poorly defined and executed contracts, inadequate planning, weak provisions for accountability, unnecessary work and costly rework, problems that are undermining attainment of national objectives and wasting billions of taxpayer dollars. We will describe some of our preliminary observations.

As Congress intended, the Interim Report is preliminary and tentative. "At What Cost?" provides an interim statement on key focus areas and results, which are listed in the report.

Since 2001, Congress has appropriated, as was stated here over, \$830 billion to fund U.S. operations in Iraq and Afghanistan. Over that period, America's reliance on contractors has grown to unprecedented proportions to support logistics, security, and reconstruction efforts. More than 240,000 contractor employees, about 80 percent of which are foreign nationals, now work in Iraq and Afghanistan, supporting the Department of Defense. Additional contractor employees support the Department of State and U.S. Agency for International Development.

These 240,000-plus contractor employees actually outnumber U.S. military personnel in the two theaters. They provide critical support, and like our military personnel, many have paid a personal price. As of May 27, 2009, 4,973 men and women of America's military and at least 13 civilian employees of the Department of Defense have died in Iraq and Afghanistan. It is less well known that more than 1,360 contractor employees have also died. Criticisms of the contingency contracting system and suggestions for reform in no way diminish the sacrifice of the military and those contractors that gave their lives.

In discussing the major subject areas of "At What Cost?" we will specifically address several issues of immediate concern. Such issues matter now, right now. They are so important that the Commission is urging corrective action well ahead of our Final Report.

First, Management and Accountability. The report's first chapter on Management and Accountability addresses a number of cross-cutting themes. The linchpin of contingency contracting is human capital. Acquisition, especially in contingencies, depends on its' government work force. The contracting officer's representatives [CORs], serve a critical role. They are the individuals on the front line of contractor performance. They are in charge of making sure that the contractor does what it is supposed to do. They monitor, for instance, whether a construction contractor works soundly, or defectively. "At What Cost?" identifies the process for designating and training CORs as an issue of immediate concern.

There are too few CORs. They are inadequately trained. War fighters often learn of their added duty of contractor supervision only after arriving in theater. On one of our field trips, we were briefed by the 10th Mountain Division, technical oversight, and they arrived in January to fight a war and at the same time they were named to this corollary duty and simply were not trained at all in support of that.

As to the subject of financial accountability, the Commission has found a large number of ineffective contractor business systems, including management of subcontractors, with a large number of unresolved audit findings.

The Commission analyzed \$43 billion in awards to 15 of the largest contractors in Iraq and Afghanistan. Fifty percent of the contractor billing systems, the basis for requesting payment from the work for billing the government and 42 percent of estimating systems, used in the pre-award for contract proposals, contain significant deficiencies.

Since the Interim Report was prepared for printing a month ago, DCAA, Defense Contract Audit Agency, has further identified three more business systems at DynCorp International as inadequate, to include the labor and billing systems that are absolutely essential to document and review costs.

The Commission's May 2009 hearing heard that through fiscal year 2008, the DCAA has taken exception to over \$13 billion in questioned and unsupported costs. In short, the environment in Iraq and Afghanistan has been and continues to be susceptible to waste, fraud, and abuse.

Additionally, there is an immediate need for greater accountability in the use of subcontractors. Subcontractors account for about 70 percent of contract work, but the government has very little visibility into their operations.

The Commission has surveyed all the reports by the Inspectors General and other oversight entities. It is interesting that there are 11 such organizations that have issued reports since the outset of the two wars. We have looked at a total of 537, and cross-referenced those reports, and derived 1,287 different recommendations over that period. Many of these recommendations have not been fully implemented, and a major focus of our near-term activity will be to try to understand why they haven't been implemented, and those organizations that said they would take action, why they have not taken action.

The U.S. Government uses, as its key logistics program in theater, what is referred to as LOGCAP, the Army Logistics Civil Augmentation Program. This is a multi-billion dollar contract, over \$30 billion to date, that covers a myriad of services from vehicle maintenance to dining-hall operation.

The third iteration of this contract, LOGCAP III was awarded to KBR as a sole vendor. The LOGCAP IV contract awarded in 2008 requires task-order competition, competition among three vendors, KBR, Fluor, and DynCorp International. But, at the present, LOGCAP III still predominates and dwarfs in terms of contract value.

DCAA Director April Stephenson stated at the Commission's May 2009 hearing, I don't think we're aware of another program, contract, or contractor that has had the significant number of suspensions or referrals.

In its recent response to that DCAA testimony, the LOGCAP III contractor, KBR, implied that most referrals for possible fraud, called "suspected irregular conduct" by DCAA, have been resolved by contracting officers. However, DCAA has advised us that as of our May 4th hearing date, none of its referrals for possible fraud

had been resolved. The total of 3,232 were still open. And that resolution of suspected irregular conduct referrals would be performed by Department of Defense Criminal Investigative Service, or by the Department of Justice, not by contracting officers.

Both the Iraq drawdown and the Afghanistan buildup raise serious questions about logistics contracting issues. For example, the Commission has learned that American bases, during this drawdown, hold more than 600,000 line items of property, trucks, generators, spare parts, clothing, tools, and much more.

Because of the poor documentation in the early days of Iraq operations and a shortage of property management officers, base commanders often do not know what property is on the base. And, as a point of reference, of those 600,000 line items, there are 3 certified and trained property managers that have that responsibility and another 12 that are part of the property management process that have not been fully trained and vetted to look out 600,000 line items, as we draw down in Iraq.

Billions of dollars must be moved elsewhere in the region, returned for stateside use, handed over to the government of Iraq, sold, or scrapped, but the lack of information, resources, and planning have set the stage for massive confusion and loss.

As an issue of immediate concern, the drawdown of U.S. forces in Iraq risks incurring enormous waste. The Commission identified more than \$2 billion in new projects in Iraq that are now being analyzed by us. A number of the projects in the pipeline may be unnecessary.

For example, during an April 2009 visit to Camp Delta in Iraq, the Commission identified a \$30 million construction contract to build a new dining facility being built near a recently expanded and upgraded facility. The new facility is due to be completed in December 2009, somewhere between a year and 2 years where U.S. troops are required to be out of Iraq. Prompt review of such projects in the pipeline could save taxpayers many billions of dollars in unnecessary spending.

Chapter 3 of "At What Cost?" addresses the subject of private security contractors, one of the major subjects set forth specifically in the Commission's statutory mandate. The report traces the significant events that shaped the subject, from the beginning of outsourcing of security in the 1980's and 1990's to the incident of the killing of Iraqi citizens by Blackwater employees in Nisur Square.

After that incident, the Secretaries of Defense and State, as well as Congress, through their continuous oversight, implemented significant reforms. I think it is important to note that the reforms appear to have worked in this case. The State Department reported 11 deadly force, discharge of weapons incidents in the month of July 2007 alone. There were another nine deadly force incidents in the month of September 2007. For the full year ending, due to the increased controls visibility, over security, for the full year ending in May 2009, there have been only two for that year incidents of use of force. So, with proper attention, improvements can be made. And our point is that there is an awful lot that is not getting proper attention.

The Commission identified a number of specific concerns related to private security contractors, as a result of our visit to Afghanistan. In Afghanistan, the Armed Contractor Oversight Division [ACOD], is the office that oversees private security contractors' licenses and makes sure they are compliant with contract terms and conditions and such, and it is a very large role.

At the present, there is such a large role for a security contractor to support that that raises issues about conflicts of interests. The post of Deputy Director, the No. 2 person, the person that briefed us when we were there, is occupied by a senior Aegis private security contractor official. The Director position, an O6 military level, equivalent to a Colonel, while it has been approved to date, it has not been filled, identified, and authorized, and so, even in contract terms, for example, sir, if there is a use of force incident and there is mandatory coordination with the government of Afghanistan, it is identified that the contractor, Aegis, will do that representative for the U.S. Government. That is the current process.

The Commission's trip to Afghanistan in 2009 underlined already-acute contracting problems in reconstruction, another area where we are going to be focused intensely during the next year. Serious shortages of U.S. Government civilians are all too likely to trigger heavy reliance on contractors, for example, the vital Provincial Reconstruction Teams.

Mr. SHAYS. Thank you, Mr. Chairman.

Mr. TIERNEY. I can't imagine that. So you must have 1 minute and 30 seconds for Mr. Tiefer and Mr. Green. [Laughter.]

Go ahead.

Mr. THIBAUT. Actually, it is just the two of us, sir.

Mr. TIERNEY. Oh, really.

Mr. THIBAUT. Yes, we have joint statements and we split it up. There are experts that are going to answer your questions.

Mr. TIERNEY. You are going to make them answer the tough questions.

Mr. SHAYS. They are here for the tough questions.

Mr. TIERNEY. It is like being back in the service, right?

Mr. SHAYS. Just continuing on, Chapter 5, entitled, "On the Agenda," provides a summary of activities the Commission has in progress or slated for study in the near future. There are over 30 bullet items, including a number of complex and far-reaching studies. The Commission encourages examination of the full list, on pages 92 to 94, and we would just like to highlight a few.

Assess methods of remedying under-staffing of contract oversight and audit functions, and assess the effectiveness of current efforts to estimate the optimum numbers and types of acquisition personnel.

Assess what shortcomings in government knowledge and information systems undermine the accomplishment of the Iraq draw-down and the buildup in Afghanistan.

Consider what processes and controls should be in place to manage decisions and assess risks of outsourcing logistic and security support services that may be considered inherently governmental functions.

Consider how best to improve the accountability in contingency contractor performance, including affirmative consideration of per-

formance in source selection, award fee determinations, and contractor performance evaluation.

That was under Management.

Under Logistics, assess potential alternatives to current logistics-contractor support, including the possible establishment of an installation-management command to manage facilities once a contingency operation stabilizes.

Identify reasons for the slow transition from LOGCAP III to IV.

Under Security, examine the sufficiency of current recruitment processes, background checks, and training to ensure the employment of possible PSC personnel, private security personnel.

Examine the potential use of civilian employees of the Departments of Defense and State in lieu of contract personnel in security roles, including the use of temporary appointments and Reserve components.

Under Reconstruction, evaluate the effectiveness of capacity-building reconstruction projects, and determine the extent to which stakeholder collaboration is an integral part of acquisition planning, contract performance, and project sustainability.

Assess the feasibility of establishing an interdepartmental entity for planning and coordination reconstruction projects in contingency operations.

And let me just end by talking about a few activities. A full description of the Commission's milestones is in the Report's Appendix B. In brief, the Commission members were named by July 2008. The Commission selected a professional administrative staff approaching 40 by January 2009. During September and October 2008, Commissioners received briefings from more than 25 key organizations and programs. They also met with leading scholars and writers on contracting issues and with contractors.

On February 2, 2009, the Commission held its first public hearing. The hearing featured testimony from the Inspector General for Iraq Reconstruction, SIGIR, including SIGIR's 2-year, book-length study released that day, "Hard Lessons: The Iraq Reconstruction Experience."

On May 4, 2009, the Commission's second hearing focused on the multi-billion dollar LOGCAP contract for logistic support services.

Commissioners and staff have made two trips to Iraq and Afghanistan to inspect work sites, review documents, conduct interviews, and receive briefings from officials on the ground. The first trip took place in early December 2008, with an itinerary that included agency briefings in Baghdad and Kabul, as well as reviews of construction of the Baghdad Police College and task orders for construction and repair of the Bagram Air Base in Afghanistan.

A 10-day investigative study in early April 2009 comprised a 15-person group of Commissioners and staff that broke into three teams. One team worked in Iraq, the other two in Afghanistan. They conducted more than 125 meetings with employees of the Departments of Defense and State, USAID, the military, and employees of contractors working on a range of projects.

The Commission continues to develop tasks for research and investigation to extend and deepen its knowledge and to cope with new or changing issues. Our plans include many more trips to theaters of operation, additional hearings involving government agen-

cies, non-governmental organizations, academics, and members of the contracting community, and continued liaison with Congress.

Before we conclude, we would like to say a few words about the Commission staff. Virtually all of the Commission's staff are Federal employees. Some are detailed from agencies and services including the Army, the Air Force, the Departments of State and Defense, the U.S. Agency for International Development, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the U.S. Army Corps of Engineers.

Some have served one or more tours in duty in theater, including working for the Special Inspector General for Iraq Reconstruction or as senior contracting officers supporting the Joint Contracting Command in Afghanistan. Others have served on congressional staff, worked in GAO, State and Defense, and held important positions on the commercial industries, which are the focus of our study. They bring hundreds of years of combined experience and education in many fields to bear on our mission and have performed valuable work for their country.

In conclusion, the Commission and staff of the Commission on Wartime Contracting in Iraq and Afghanistan take very seriously the tasks that Congress has assigned to us. We appreciate how important these tasks are to improve support for our war fighters and our diplomatic employees.

We sincerely thank you for the opportunity to describe our work to you today, and pledge our best efforts to provide information and recommendations that will help you make good decisions on contingency operations.

Mr. Chairman, we thank you for your support of this Commission, but also as well your critical review. We know that this committee, as will the Senate, be looking at everything we do to help us do a better job and to make sure we do a good job.

[The prepared joint statement of Mr. Thibault and Hon. Christopher Shays follows:]



Joint Statement of  
Michael Thibault and Christopher Shays, Co-Chairs  
The Commission on Wartime Contracting in Iraq and Afghanistan

**“Commission on Wartime Contracting:  
Interim Findings and Path Forward”**

Subcommittee on National Security and Foreign Affairs,  
U.S. House Committee on Oversight and Government Reform

Washington, DC, June 10, 2009

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Mr. Chairman, Ranking Member, and Members of the Subcommittee, thank you for inviting us to speak to you today about our Interim Report.

We are appearing on behalf of the Commission on Wartime Contracting in Iraq and Afghanistan. We are the Commission's Co-Chairs, Michael J. Thibault and Christopher H. Shays. We are accompanied by two fellow Commissioners, Professor Charles Tiefer and Grant S. Green, who have particular subject-matter expertise that you may draw upon during the question period.

The Commission has four other members; they are Clark Kent Ervin, Linda J. Gustitus, Robert J. Henke, Dov S. Zakheim. As you know, Congress established the Commission by statute in 2008 as an independent, bipartisan body to assess a range of issues relating to wartime contracting.

We will keep our opening statements brief to allow maximum time for discussions and questions of the Members' choice. We respectfully request that the full text of our prepared statement, as well as a copy of our Interim Report to Congress, be incorporated into the record of this hearing.

**INTRODUCTION AND BACKGROUND**

The precipitating event for Chairman Tierney's inviting us here today is the official release of that Interim Report to Congress, entitled *At What Cost?* Contingency Contracting in Iraq and Afghanistan.

Our report identifies many long-standing issues for awarding, managing, and auditing the vital contracts that support logistics, security, and reconstruction missions during U.S. contingency operations. These include shortages in the federal acquisition workforce, poorly defined and poorly executed contracts, inadequate planning, weak provisions for accountability, unnecessary work and costly rework—problems that are undermining attainment of national objectives and wasting billions of taxpayer dollars.

The disturbing implications go far beyond questions of good management and financial responsibility. They directly involve our nation's ability to achieve policy objectives and provide proper support and protection for our warfighters and civilian employees engaged in contingency operations. We will describe some of our preliminary observations, highlight several issues that we believe merit your immediate attention, and outline the work that we will pursue in the months to come. We are scheduled to release a Final Report in August of next year.

As Congress intended, the Interim Report is preliminary and tentative. *At What Cost?* provides an interim statement on key focus areas, which are listed on Report page 1 ("Rep. 1"). To summarize those focus areas—placing all of the following in the context of contingency contracting—they include:

- agency leadership, culture, and accountability, pre-deployment planning, and acquisition staffing and training;
- contract requirements, pricing, competition, and inherently governmental functions;
- contractor performance and cost effectiveness, and foreign subcontractors; and
- the Iraq drawdown and the Afghanistan buildup.

Since 2001, Congress has appropriated about \$830 billion to fund U.S. operations in Iraq and Afghanistan. Over that period, America's reliance on contractors has grown to unprecedented proportions to support logistics, security, and reconstruction efforts related to those operations. More than 240,000 contractor employees—about 80 percent of them foreign nationals—now work in Iraq and Afghanistan, supporting the Department of Defense. Additional contractor employees support the Department of State and the U.S. Agency for International Development (USAID).

These 240,000-plus contractor employees actually outnumber U.S. military personnel in the two theaters. They provide critical support, and like our military personnel, many have paid a personal price. As of May 27, 2009, 4,973 men and women of America's military and at least 13 civilian employees of the Department of Defense have died in Iraq and Afghanistan. It is less well known that more than 1,360 contractor employees have also died. Criticisms of the contingency contract system and suggestions for reform in no way diminish their sacrifices.

In discussing the major subject areas of *At What Cost?* we specifically address several "issues of immediate concern." Such issues matter now — right now. They are so important that the Commission is urging corrective action well ahead of its Final Report. Evidence already in hand shows that these issues require prompt action to avoid further undermining U.S. objectives and wasting more taxpayer money. These "issues of immediate concern" have been underlined for emphasis. The entire list of "issues of immediate concern" appears in an endnote to this statement.<sup>1</sup>

#### SUBJECTS OF AT WHAT COST?

##### **Management and Accountability**

The report's first chapter on "Management and Accountability" addresses a number of cross-cutting management themes. The linchpin of contingency contracting is human capital: acquisition, especially in contingencies, depends on its government workforce. The contracting officer's representatives (CORs) serve a critical role. They are the individuals on the front line of contractor performance. They are in charge of making sure that the contractor does what it is supposed to do. They monitor, for instance, whether a construction contractor does work soundly, or defectively. *At What Cost?* Identifies the process for designating and training CORs as an issue of immediate concern, and concludes that the process is essentially broken.

There are too few CORs. They are inadequately trained. They often learn of their added duty of contractor supervision only after arriving in theater, when acquiring training is more difficult. And, they are often vastly overworked. For example, in Afghanistan, one COR told the Commission that he was responsible for overseeing 15 contracts and conducting four performance reviews — all as extra duty after he completes his three primary duties. (Rep. 11). The broken COR system, combined with other issues like a severe shortage of subject-matter

experts to inspect electrical and other specialized work, is a perfect storm for our government's contracting workforce.

As to the subject of financial accountability, the Commission has found a large number of ineffective contractor business systems, including management of subcontractors -- with a large number of unresolved audit findings. The Commission analyzed \$43 billion in awards to 15 of the largest contractors in Iraq and Afghanistan. Fifty percent of contractor billing systems (used for billing the government) and 42 percent of estimating systems (used for contract proposals) contained significant deficiencies. (Rep. 27). Since the Interim Report was prepared for printing, DCAA has identified three more business systems at DynCorp International as inadequate, including the labor and billing systems that are essential to document and review costs. Shortcomings in these systems increase the time and effort required to obtain contractor corrections material system deficiencies.

These facts make it clear that too many contractor business systems are inadequate and must be fixed. The Commission's May 2009 hearing heard that, through fiscal year 2008, the DCAA has taken exception to over \$13 billion in questioned and unsupported costs associated with the efforts in theater. In short, the environment in Iraq and Afghanistan has been and continues to be susceptible to waste, fraud, and abuse. (Rep. 28).

Additionally, there is an immediate need for greater accountability in the use of subcontractors. Subcontracts account for about 70 percent of contract work, but government has very little visibility into their operations. For example, DCAA auditors reported inadequacy in KBR's purchasing system, which inhibits government's ability to effectively monitor subcontractor activities. The use of an inadequate purchasing system to execute urgent projects using subcontractors, many of them foreign, contributes to ineffective contract management and further increases the potential for waste, fraud, and abuse. (Rep. 35).

The Commission has surveyed all of the reports by Inspectors General and other oversight entities and has tallied 537 reports with 1,287 recommendations. (Rep. 25). Agencies have not fully implemented those recommendations. Even when they mark recommendations "closed," some of the same problems continue. As an issue of immediate concern in this area, the effectiveness of contractor support to expanded U.S. operations in Afghanistan is compromised by the failure to extract and apply lessons learned from Iraq, particularly those concerning poor coordination among agencies. (See Rep. 5 and 19).

## Logistics

The U.S. government uses, as its key logistics program in theatre, LOGCAP (the Army's Logistics Civil Augmentation Program). This is a multi-billion-dollar contract that covers a myriad of services from vehicle maintenance to dining-hall operation. The third iteration of this contract, LOGCAP III, was awarded to KBR Inc. as sole vendor. The LOGCAP IV contract awarded in 2008 requires task-order competition among three vendors: KBR, Fluor, and DynCorp. But LOGCAP III still predominates. Billions of dollars in wasteful spending has occurred and may be still occurring under the LOGCAP III contract that has KBR as the sole prime contractor.

DCAA Director April Stephenson stated at the Commission's May 2009 hearing, "I don't think we're aware of [another] program, contract, or contractor that has had this number of suspensions or referrals." (Rep. 48). In its recent response to that DCAA testimony, the LOGCAP III contractor, KBR, implied that most referrals for possible fraud (called "suspected irregular conduct" by DCAA) have been resolved by contracting officers. However, DCAA has advised us that as of our May 4 hearing date, *none* of its referrals for possible fraud had been resolved—and that resolution of suspected irregular-conduct referrals would be performed by DoD's Defense Criminal Investigative Service or by the Department of Justice, not by contracting officers.

As an issue of immediate concern, the benefits of competition are not being fully realized because of the slow pace of the transition from LOGCAP III to the more competitive LOGCAP IV logistics support contract.

Both the Iraq drawdown and the Afghanistan buildup raise serious logistics contracting issues. The Commission has learned that American bases in Iraq hold more than 600,000 kinds of property—trucks, generators, spare parts, clothing, tools, and much more. Because of poor documentation in the early days of Iraq operations and a shortage of property-management officers, base commanders often do not know what property is on the base, who owns it, or whether it has been properly maintained.

Billions of dollars of property must be moved elsewhere in the region, returned for stateside use, handed over to the government of Iraq, sold, or scrapped, but the lack of information, resources, and planning for this transition have set the

stage for massive confusion and loss.

As an issue of immediate concern, the drawdown of U.S. forces in Iraq risks incurring enormous waste, which could range from completion of work that may not need to be done, to poorly controlled handling and disposition of U.S. government property. (69).

The Commission identified more than \$2 billion in new projects in Iraq—yet a number of the projects in the pipeline may be unnecessary. For example, during an April 2009 visit to Camp Delta in Iraq, the Commission identified a \$30 million construction contract—a new dining facility being built near a recently expanded and upgraded facility. The new facility is due to be completed in December 2009—a year before U.S. troops are required to be out of Iraq. Prompt review of such projects in the pipeline could save taxpayers many millions or billions in unnecessary spending.

As for the Afghanistan buildup, the government continues to suffer from chronic staffing shortages for oversight personnel—as with the rest of LOGCAP, only more so. (Rep. 57). Moreover, property management is already a major problem in Afghanistan. Given all the many issues of concern related to contracting in Afghanistan, the Department of Defense should accelerate its plans to establish a contracting command in Afghanistan. The troop surge in Afghanistan demands that contracting oversight be conducted in-country rather than from Iraq, which is currently the case. (Rep. 5).

We would note that U.S. Army Central Command is undertaking an organizational evaluation of the possibility of installing a major-general level officer with overall responsibility and a separate commander in each theater location. The concept is for contracting-related information to flow directly to CENTCOM and enable consolidated oversight and management of matters that too often receive only fragmented attention. We believe this is an encouraging sign of active measures to seek better structures and processes for contingency contracting.

## Security

Chapter 3 of *At What Cost?* addresses the subject of private security contractors, one of the major subjects set forth specifically in the Commission's statutory mandate. The report traces the significant events that shaped the subject, from the beginning of outsourcing in the 1980s and 1990s to the incident of the killing

of Iraqi civilians by Blackwater employees in Baghdad's Nisur Square in 2007. After that incident, the Secretaries of Defense and State, as well as Congress, implemented significant reforms. (Rep. 63-65). The reforms appear to have worked. The State Department reported 11 deadly-force incidents involving its Worldwide Personal Protective Services contract in July 2007. For the full year ending in May 2009, however, there were only two.

The Commission identified a number of specific concerns with respect to private security contracts as a result of its visits to Iraq and Afghanistan. As an issue of immediate concern, the Department of Defense should take immediate steps to ensure that contractors providing security for our operating bases are well trained and equipped to provide strong force protection to our military.

Among specific issues, the Commission found, during its recent visit to Iraq, a shortage—sometimes a complete lack—of government employees with the requisite skill set to oversee private security. Some contractors in Iraq may be limiting training and not providing basic equipment (Rep. 71). Private security contractors may not be receiving sufficient training in the Rules for the Use of Force – which may lead to an inappropriate use and escalation of force as well as a failure to use force in a manner consistent with the circumstances of a situation. (Rep. 73).

In Afghanistan, the Armed Contractor Oversight Division (ACOD)—the office which oversees private security contractors -- has such a large role for its contractor, Aegis, as to raise issues about conflicts of interest, and about contracting of inherently governmental activity. The post of Deputy Director of ACOD is occupied by an Aegis contractor. Since Aegis can bid on work overseen by ACOD, an obvious conflict of interest could arise. Also, the distribution of weapons to contractor employees may violate regulations and cut vital government overseers out of the loop. (Rep. 76).

## **Reconstruction**

Reconstruction programs range from infrastructure repair and construction, to democracy building and training for police and security forces. Over \$80 billion appropriated for reconstruction in Iraq and Afghanistan have produced mixed results, to say the least, and include up to \$5 billion of waste in Iraq reconstruction. At the Commission's February hearing, the Special Inspector General for Iraq Reconstruction confirmed that failure of sustainability—ensuring local people's capacity to operate and maintain projects like water

plants and electric grids after the United States turns them over to Iraqi control—could turn out to be the biggest source of waste in reconstruction contracting

The government must learn from its missteps in Iraq as large sums of money will soon be obligated for reconstruction contracts of all types in Afghanistan. In general, this includes greater international cooperation, greater interagency coordination, and improvement of the metrics used to assess the success of contracts dealing with less tangible subjects, such as the development of democracy and civil society. Such contracts amount to billions of dollars, but as recent IG reports have shown, agencies such as USAID do not yet have a firm sense of how to assess progress in key areas like drug eradication. Moreover, the programs and contracts managed by USAID require greater coordination with Commander's Emergency Response Program (CERP), which the military has used effectively to promote local support for reconstruction efforts.

The Commission's trip to Afghanistan in 2009 underlined already-acute contracting problems in reconstruction. Serious shortages of U.S. government civilians are all too likely to trigger heavy reliance on contractors in, for example, the vital Provincial Reconstruction Teams.

Reports both by SIGIR and USAID's inspector general indicate a lack of contract oversight and the metrics necessary to assess progress. For example, a January 2009 inspector general report on agency obligations since FY 2002, totaling over \$7.2 billion, discussed the greatest obstacles beyond security. The USAID-IG's audits found that "the most frequent problem affecting USAID development efforts in Iraq involves inadequate contract oversight or project management (29 percent;" another problem was "noncompliance with contract procedures (20 percent)."

### **On the Agenda**

Chapter 5 provides a summary of activities the Commission has in progress or slated for study in the near future. There are over thirty bullet items, including a number of complex and far-reaching studies. The Commission encourages examination of the full list (Rep. at 92-94). We offer illustrative excerpts here:

#### *EXCERPTS FROM "ON THE AGENDA"*

##### MANAGEMENT AND ACCOUNTABILITY



- Assess methods of remedying understaffing of contract oversight and audit functions, and assess the effectiveness of current efforts to estimate the optimum numbers and types of acquisition personnel.
- Assess what shortcomings in government knowledge and information systems undermine the accomplishment of the Iraq drawdown and the build-up in Afghanistan.
- Consider what processes and controls should be in place to manage decisions and assess risks of outsourcing logistics and security support services that may be considered inherently governmental functions.
- Assess the need for changes in laws, regulations, and contract requirements to improve visibility of subcontractor performance during a contingency operation.
- Determine the circumstances in which the United States should give contract award preferences to host-country firms in the U.S. Army Central Command area of responsibility.
- Explore the need to revise the roles and responsibilities for contingency contract management, and identify the training and tools necessary to accomplish the contract management mission.
- Identify and evaluate opportunities for the improvement of contingency contractors' financial, accounting, and administration systems, thereby reducing the risk of waste, fraud, and abuse.
- Consider how best to improve accountability in contingency contractor performance, including affirmative consideration of performance in source selection, award fee determinations, and contractor performance evaluation.
- Evaluate methods for improved analysis of contractor cost proposals, including determinations of the reasonableness of estimated contingency contract costs and adequacy of business systems.

## LOGISTICS

- Assess potential alternatives to current logistics-contractor support, including the possible establishment of an installations-management command to manage facilities once a contingency operation stabilizes.
- Examine the role of logistics contractors in support of the Iraq drawdown and Afghanistan buildup.
- Identify reasons for the slow transition from LOGCAP III to IV.
- Assess recurrent or systemic problems with LOGCAP contractors' accounting or quality assurance.

#### SECURITY

- Examine the sufficiency of current recruitment processes, background checks, and training to ensure the employment of responsible PSC personnel.
- Evaluate the processes to improve contract compliance with provisions governing PSC weapons distribution and recovery, contractor use of force, and host-nation laws.
- Examine the potential use of civilian employees of the Departments of Defense and State in lieu of contractor personnel in security roles, including the use of temporary appointments and of Reserve components.

#### RECONSTRUCTION

- Assess the role of contractors in the Afghanistan reconstruction initiatives (including security training and "soft" developmental initiatives).
- Evaluate the effectiveness of capacity-building reconstruction projects, and determine the extent to which stakeholder collaboration is an integral part of acquisition planning, contract performance, and project sustainability.
- Assess the feasibility of establishing an interdepartmental entity for planning and coordinating reconstruction projects in contingency operations.

## OTHER MATTERS

**Commission organizational matter**

Finally, we would like to mention one issue of some complexity regarding support of operations. This concerns whether the Commission can obtain transportation and other support from the Department of Defense on a non-reimbursable basis, as the 9/11 Commission did from its designated support agency.

This Commission's authorizing statute lacked explicit support language that was included in the 9/11 Commission bill. Uncertainty or inability to obtain non-reimbursable support would pose a major problem for a Commission as it actively seeks to travel to sites in-theater for oversight and inspection, and as the need for more intense work in Afghanistan develops.

**Authorizing statute and other information**

The appendices in *At What Cost?* contain the Commission's statute (Appendix A), Commission Milestones (Appendix B), Methodology (Appendix C), and Commission Staff Roster (Appendix D).

Our governing statutory language is Section 841 of the National Defense Authorization Act for FY 208 (Pub. L. 110-181). The relevant heart of it is section (c)(3), supplemented by directives in (d)(3) as to what the final report should address):

- (3) PARTICULAR DUTIES.-In carrying out the study under this subsection, the Commission shall assess-
  - (A) the extent of the reliance of the Federal Government on contractors to perform functions (including security functions) in Iraq and Afghanistan and the impact of this reliance on the achievement of the objectives of the United States;
  - (B) the performance exhibited by Federal contractors for the contracts under review pursuant to paragraph (1), and the mechanisms used to evaluate contractor performance;
  - (C) the extent of waste, fraud, and abuse under such contracts;
  - (D) the extent to which those responsible for such waste, fraud, and abuse

have been held financially or legally accountable;  
 (E) the appropriateness of the organizational structure, policies, practices, and resources of the Department of Defense and the Department of State for handling program management and contracting for the programs and contracts under review pursuant to paragraph (1);  
 (F) the extent to which contractors under such contracts have engaged in the misuse of force or have used force in a manner inconsistent with the objectives of the operational field commander; and  
 (G) the extent of potential violations of the laws of war, Federal law, or other applicable legal standards by contractors under such contracts.

### Activities

A full description of the Commission's milestones is in the report's Appendix B. In brief, the Commission members were named by July 2008. The Commission selected a professional and administrative staff approaching 40 by January 2009. During September and October of 2008, Commissioners received briefings from more than 25 key organizations and programs, and they also met with leading scholars and writers on contracting issues and with contractors.

On February 2, 2009, the Commission held its first public hearing. The hearing featured testimony from the Inspector General for Iraq Reconstruction (SIGIR), including SIGIR's two-year, book-length study released that day, *Hard Lessons: The Iraq Reconstruction Experience*. Also testifying were three departmental Inspectors General and three Senators: Clair McCaskill (D-MO), James Webb (D-VA) – the original Senate sponsors of the legislation establishing the Commission – and Senator Susan Collins (R-ME), the ranking member of the Homeland Security Committee.

On May 4, 2009, the Commission's second hearing – here in Room 2154 of the Rayburn House Office Building – focused on the multi-billion-dollar LOGCAP contract for logistical support services. Rep. John F. Tierney of Massachusetts, chairman of this Subcommittee, offered welcoming remarks. Witnesses included April Stephenson, the Director of the Defense Contract Audit Agency, and senior officials of three contracting agencies.

Commissioners and staff have made two trips to Iraq and Afghanistan to inspect work sites, review documents, conduct interviews, and receive briefings from officials on the ground. The first trip took place in early December 2008, with an itinerary that included agency briefings in Baghdad and Kabul, as well as

reviews of construction of the Baghdad Police College and task orders for construction and repair of the Bagram Air Base in Afghanistan.

A 10-day investigative trip in early April 2009 comprised a 15-person group of Commissioners and staff that broke into three teams: one team worked in Iraq, the other two in Afghanistan. They conducted more than 125 meetings with employees of the Departments of Defense and State, USAID, the military, and employees of contractors working on a range of projects.

In addition to meetings in Baghdad and Kabul, the teams visited projects in the provinces and military forward operating bases, including Camps Hammer, Victory, and Delta in Iraq, and Camps Phoenix, Eggers, and Shank, as well as Bagram Air Base in Afghanistan. Two main issues of the trip were private security contracting and LOGCAP.

The Commission continues to develop tasks for research and investigation to extend and deepen its knowledge and to cope with new or changing issues. Our plans include more trips to theaters of operation; additional hearings involving government agencies, non-governmental organizations, academics, and members of the contracting community; and continued liaison with Congress.

Before we conclude, we would like to say a few words about the Commission staff, whose subject-matter expertise, contracting and technical experience, analytical and project-management prowess, and editing skills made publication of the Interim Report possible. We start with Robert Dickson, the Commission's Executive Director. A former executive director of the State Department's Bureau of Administration and director of acquisitions, he is also a retired Army colonel with 30 years' service. He has done an exemplary job of assembling, directing, and motivating a diverse staff.

Virtually all of the Commission's staff are federal employees. Some are detailed from agencies and services including the Army, the Air Force, the Departments of State and Defense, the U.S. Agency for International Development, the Defense Contract Management Agency, the Defense Contract Audit Agency, and the U.S. Army Corps of Engineers. Some have served one or more tours of duty in theater, including working for the Special Inspector General for Iraq Reconstruction or as senior contracting officers supporting the Joint Contracting Command in Afghanistan. Others have served on Congressional staff; worked in GAO, State, and Defense; and held important positions in the commercial industries which are the focus of our study. They bring hundreds of years of

combined experience and education in many fields to bear on our mission and have performed valuable work for their country.

### CONCLUSION

The Commissioners and staff of the Commission on Wartime Contracting in Iraq and Afghanistan take very seriously the tasks that Congress has assigned us. We appreciate how important they are to improve support for our warfighters and our diplomatic employees.

We thank you for the opportunity to describe our work to you today, and pledge our best efforts to provide information and recommendations that will help you make good decisions on contingency operations. Thank you.



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## Issues of Immediate Concern

- The drawdown of U.S. forces in Iraq risks incurring enormous waste, which could range from completion of work that may not need to be done, to poorly controlled handling and disposition of U.S. government property.
- There is a critical shortage of qualified contract-management personnel in theater and those that are there are stretched too thin. In particular, the process for designating and training contracting officer's representatives to check contractor performance in theater is broken.
- The benefits of competition are not being fully realized because of the slow pace of the transition from LOGCAP III to the more competitive LOGCAP IV logistics support contract.
- Too many contractor business systems are inadequate and must be fixed.
- There is a need for greater accountability in the use of subcontractors. Subcontracts account for about 70 percent of the work, but government has very little visibility into their operations.
- The effectiveness of contractor support of expanded U.S. operations in Afghanistan is compromised by the failure to extract and apply lessons learned from Iraq, particularly those about poor coordination among agencies.
- The Department of Defense should accelerate its plans to establish a contracting command in Afghanistan. The troop surge in Afghanistan demands that contracting oversight be conducted in-country rather than from Iraq, which is currently the case.
- The Department of Defense should take immediate steps to ensure that contractors providing security for our operating bases are well trained and equipped to provide strong force protection to our military.

###

Mr. TIERNEY. Thank you. I thank both of you and the other witnesses as well. You are right, Mr. Shays, I mean this is all about working together. It isn't about criticism. Obviously, you have been at this only a few months and you have developed your staff, have your office space, tried to get your plan together, and I think that you have done a remarkable job in many respects and appreciate the Interim Report.

I have a number of questions. I am going to start with some procedural things, as we go around a couple of rounds here, we will get to some of the other issues on that, but one comment that Mr. Thibault made was that there were a significant number of reports and recommendations coming from those reports, many of which have not been implemented. Now, that should disturb us all.

And you also said later on, however, that there were a lot of issues outstanding that weren't getting enough attention. You indicated that in the context of oversight was working in some respects with the security incidents being significantly down. So, in the context of your plan, are you planning on reporting to Congress at some point how we might best utilize those investigative sources that are at there, the Government Accountability Office, the Inspectors General from the various departments, or how that ought best be coordinated so that all the issues are covered?

And then I know you already said that on the second part of that, you do intend to investigate why some of these suggestions are not being implemented, the recommendations. That will be important for us to know whether it is an executive inaction, legislative inaction, whether we are just not having enough hearings tuned in and up on that, or whether it is all departmental and they just don't know the processes there.

Mr. THIBAUT. Yes, sir. You know we intend to take those 1,200 plus recommendations out of those 537 reports, and we intend to trace each one to find out the status. We are aware that there are significant issues now on key recommendations. There is a direct tie-in to correcting problems that we also have observed and others have reported in the past.

It is interesting to note, one thing I might share and it is something that we are going to talk about and try to evaluate, when we are out in the field at four bases, and Camp Victory and Afghanistan, and Joint Task Force 101, universally they were supportive. But universally, they said, if there is anything this Commission can do relative to the fact that we have so many, I cited 11 organizations so that it can be coordinated better, because it seems like we are collecting information and then turning around and collecting the same information 2 months later, it is just 2 months updated for a different organization.

Each of these oversight organizations has a vital job to do, but contingency environment is unique from an oversight because it is so distance oriented and you have to place some people onsite, and people going back and forth, but that is a worthy area to look at.

Mr. TIERNEY. And I will ask some questions later on about just how we go about doing that in the personnel shortages. I think some of the capacity issues are serious, but does the Commission feel that it has enough in-country presence over in the theaters that you are investigating?



Mr. SHAYS. The Commission is debating right now whether we should have a permanent representation in Afghanistan and Iraq and then obviously our Commissioners and our staff will be going repeatedly. And so, that is something we will be able to get back to you very quickly on, but we know that we need to be there in both countries.

Mr. TIERNEY. Thank you, Mr. Flake.

Mr. FLAKE. Thank you, Mr. Chairman. I have some of the same concerns about if you have so many recommendations. You had 1,200 recommendations you said that have been put forward. Is that from your group, or from all over?

Mr. THIBAUT. No, sir. We went through all 537. We sorted them. We cross-referenced them, because we were tasked to build upon that work, not to recreate that work.

Mr. FLAKE. Right. So, some of those 1,200 come from the other investigative bodies that have put forward recommendations.

Mr. THIBAUT. All of the 1,200 that I referenced, sir, come from those organizations.

Mr. FLAKE. And what remedy is there if these aren't implemented? What are we to do, or what are other bodies to do, if they aren't implemented?

Mr. THIBAUT. I think that point is spot-on in terms of the emphasis and it fits this subject of accountability. You know, if someone says they are going to correct a major problem, and they are going to correct it within a certain time period, and they don't, one of the things we run into, for example, because a turnover of staff and the aging, and so, I really didn't understand that. I have just picked up that responsibility, but there is an absence of first of all recording what is being done with that.

Some of the IG organizations do a good followup, but the actions just aren't getting accomplished to the extent that government organizations have agreed to do.

Mr. FLAKE. In talking with a lot of the agencies on some other issues, we are often told we have a process by which we can offer sole source contracts. We have to bid every contract out. Yet, you mention KBR here had a sole source contract for certain activities there, could that contract have been bid out? Isn't there a process that the Department of Defense has to go through if they don't bid a contract out? There is a J&A that has to be issued, or something. Why are they able to still have these contracts sole-sourced? Mr. Tiefer, do you want to take that one?

Mr. TIEFER. Mr. Flake, that is an excellent question. It has been some years that the Department of Defense has tried to have a later contract, a later version, a later iteration of LOGCAP, in which there would be three competitors. And I think the talk about that goes back at least 2 years.

They are now slowly phasing-in that successor arrangement that would have competition among three companies. And that is an activity we are going to be following in-theater, but it is still not being activated in Iraq, that is each task order under the LOGCAP contract still has only one vendor, KBR. And there has been some concern voiced that phasing-in of a competitive arrangement is going too slowly.

Mr. FLAKE. I know that your jurisdiction covers just wartime, in theater, but it seems that problem goes beyond. As I mentioned, I have been trying for months to get access to some of these J&As to justify why some of these contracts aren't bid out, and I haven't been able to get them yet. And so, are some of these problems that you see in theater, do you think that they go beyond that, or is just because of the circumstances inherent in wartime?

Mr. TIEFER. I am not at all surprised that you are seeing similar problems back in the United States and in domestic context. There is no special exception in the competition contracting act for wartime sole sourcing. And the same exceptions that have been used in the past and used to date in Iraq have been used in the domestic United States. So, you would run into the same problems.

Mr. FLAKE. Are you as part of your activities asking for these J&As to see what justification was given for sole source?

Mr. TIEFER. We do look not just at the justification and authority, the J&A, for these contracts, but at the subsequent documentation and we have been going through following up. The J&A is often very superficial, just well, it is the exception for exigent circumstances, or it is the exception for this is the only available contractor, and we have followed those up to see whether it really has to be done without competition.

Mr. THIBAUT. I might, sir, add a point that this was a very unique contract in the sense, and you could maybe think about whether it was dysfunctional in terms of the way it was established, but there was competition, but it is a 10-year contract, cost-type, dollar-for-dollar 10-year contract. Once a year, it can be rolled over.

So, you are talking about a contracting action with a sole supplier that dates back to the 2003, I believe, timeframe, and it is still in place because 10 years haven't passed. So, there is no competition anymore. And that is why we are encouraged by the action to go to LOGCAP IV, where there is at least three vendors that will bid on every task order, but discouraged by the pace that is being implemented. There are tremendous opportunities.

We saw an example where the same type of work that was bid in Kuwait, using LOGCAP III, had priced out at \$120 million. It was \$55 million less after competition came in. So, competition is a good thing in the environment, and there is nothing unique about a wartime zone where you can't usually employ competition.

Mr. SHAYS. If I could, Mr. Flake—excuse me, go ahead. I am sorry.

Mr. GREEN. If I might add to what Commissioner Thibault said earlier, and some of your concerns about the 1,200 recommendations that have come from other oversight organizations to which we will certainly add a number of our own observations and recommendations.

Where we have a challenge, I believe, and that is, when we go away, have we come up with procedures which will encourage followup? All of you have seen dozens and dozens and dozens of studies, as I have, with some very valid recommendations that collect dust. So, one of the challenges we have, and a challenge that you may have, is how do we force some of these actionable recommendations forward, as we turn out the lights? And that is a

problem that we face, or a challenge that we face, which is not much different than every other commission and oversight organization faces.

Mr. TIERNEY. Well, I think you have hit right on something that the three of us now, if I look at the panel collectively, it honed right in on this. So, we are really going to rely on the Commission to give us some direction, at least to that at which you think ought to be done, whose responsibility would it be to followup? Would it be the executive? Would it be the Department? Would it be Congress, or whatever? And then, it is going to become upon us to work with you to try to put that legislation, if necessary, and if it is not legislation, then set up some series of hearings, wherever we put the spotlight on, whoever is responsible, and keep moving on that to get it done because it is ridiculous. You keep having all of these hearings go out there.

Mr. GREEN. Precisely.

Mr. TIERNEY. Thank you. Mr. Foster, you are recognized for 5 minutes.

Mr. FOSTER. I was interested in whether you think that we will be in a position to make some sort of retrospective analysis of the sort of make-versus-buy decision, the decision to contract stuff out, the decision to sole-source or multi-source the contracts, whether at the end of this, we will be able to step back and then set up the general principles that will tell us whether it is a good idea to contract out a class of work, or not?

Mr. SHAYS. I would love to just make a comment that when we talk about LOGCAP III that was a contract that was given to KBR before we went into Iraq. No one anticipated that we would be spending incredible, over \$30 billion, to one contractor. When we went to LOGCAP IV, which we bid out, three contractors have it, and then they will bid internally among the three, none of them getting more than, I believe, \$5 billion a year. And so, we are talking over 10 years, \$150 billion potentially. So, the government has introduced a forum of competition there, but, when we went into Iraq, there was one company that had in a sense won the contract.

In terms of the whole, the number of recommendations that have been made and the 500 reports and so on, our task is to categorize every one of them, to be able to come back and tell you which ones have been implemented, which ones haven't, why we think they have been implemented, why they haven't, and our recommendations of what could and should be done. So, when you see us looking at those past reports, it is not to re-work them, it is just to know what is done and to make sure you know what has been done and hasn't been done.

Mr. THIBAUT. And sir, to your point about, are we going to look at the contracting mechanisms, there is an absolute obligation to look at it, and the type of contracts, whether competition has been used and makes sense. I will make a couple of observations in fairness to the record.

There are significant efforts to use competition in certain parts of contracting by the military and by State, but one of the areas we highlighted that we are really going to focus on in terms of the type of contracts is subcontracting.

For example, in the LOGCAP program, it is a cost-type contract. It is dollar for dollar. All of the subcontracts are fixed-price, so the prime gets dollar for dollar on the fixed price and all of their labor, but it is a fixed price. So, it kind of begs the question, how good of a job is being done with that? There are foreign firms that are involved with that. What kind of data analysis and records are going to be evaluated? That is the frustration you see in the report and that is the obligation of the prime contractor, but we are going to be looking at the prime contractor's system to be sure that they are fulfilling their contractual requirements.

Mr. FOSTER. Will that sort of analysis also look at the in-house versus contractor approach? I mean once upon a time there were mess sergeants, right, and so the question is whether you know ultimately that would have actually been a better deal for the taxpayer, to go the traditional route, turn up the soldier's salaries, if necessary.

And similarly, are there rules of thumb evolving, or maybe already existing, in terms of the amount of contracting oversight per dollar spent, as a rule of thumb, you want one person on the ground overseeing every \$20 million of money spent, or something like that?

Mr. THIBAUT. Well, what I saw in Afghanistan personally, is the Defense Contract Management Agency went through and identified several thousands of tasks that needed to be done and drew it down to 537 individuals, theater-wide, that needed to go out and look at that work being done. The unfortunate part was, the number was either 160-something or 180-something, but it was only 36 percent of those positions were filled. So, in about two out of three positions, there is nobody looking at the contractor. So, they'd done a good analysis. They just hadn't done the work.

Mr. FOSTER. So, what is the nature of the training that is missing?

Mr. THIBAUT. That is also a very good question because Defense Acquisition University has developed a couple of courses, but I would tell you, my example of 10th Mountain Division, when we brought these individuals in, these military, these great Americans, and said, so, what about training? They had none.

So, there is a course at Fort Belvoir, and then they told them, they said, well, we have this on-line 8-hour, 16-hour course, and one of them looked at me and said, right. And he said, because of cone-activity problems, I spent 30 days trying to take this 8-hour course, and off and on, off and on, because I kept getting caught off, and I finally said, the heck with it. I can't finish this course, so I am going to do the best job I can. They are out there trying to do the best job they can, but they are not equipped with the training. So, there is training that has been developed, but if they don't get it before they go—

Mr. GREEN. And another point is, as Chairman Thibault mentioned, in addition to the shortage of oversight personnel, whether it is 160 or 180, many of them are mis-cast, and we referenced a few examples in the report, where you've got a combat medic overseeing the security operations at a forward operating base. We have other instances where one contract officer representative is overseeing 15 different contracts, in addition to performing their

principal duty, which is unrelated to any of the contracts that person is overseeing. So, there is a shortage. There is a training problem. And there is a casting problem of applying the right kind of skills to the contract oversight. And in many cases, we don't have those skills within the Army.

Mr. SHAYS. And, if I could just add one other quick point, a number of these, say the contracting officer representatives [CORs], they may come in and leave and the contractor is still there, so they don't have the institutional knowledge and they don't stay long enough. So, that is another part of the problem.

Mr. TIERNEY. Thank you, Mr. Foster. Mr. Duncan, you are recognized for 5 minutes.

Mr. DUNCAN. Well, thank you very much, Mr. Chairman. And let me first of all say that I think the work you are doing is very, very important, and I hope that it doesn't just gather dust, and I am very pleased that our former colleague, Congressman Shays, is on the panel because I always thought that Chairman Shays was one of the finest Members that this committee ever had.

Mr. TIERNEY. Jim, could you pull that mic a little closer to you? Thank you.

Mr. DUNCAN. I have been tremendously concerned about the horrendous waste that has been going on in the Defense Department, and especially so after a year or a year and a half ago when the GAO came out with a report that said that we had \$295 billion in cost overruns in just our 72 largest weapon systems. And it seems to me that anybody who considers himself or herself to be fiscally conservative should have been extremely upset or horrified by that, yet it didn't seem that many people were.

And it looks as though both parties are trying to prove how patriotic they are, or are concerned that somebody might feel that they are not patriotic because they don't just give the Defense Department every penny that they want and then some. And now, we are ramping up in Afghanistan and spending unbelievable amounts of money there.

And then, I read in your testimony, Mr. Thibault, that you are talking about massive confusion and loss, enormous waste, you say billions of dollars in wasteful spending has occurred and may still be occurring, and it looks to me like, it really would be unpatriotic if we didn't question these things and do everything possible to stop all this waste, yet a very few people are willing to vote against anything the Defense Department wants, so apparently nothing is being done, and I sometimes wonder if there are any fiscal conservatives at the Pentagon.

According to the Congressional Research Service, we are now spending, when we add in the regular budget, the supplemental Bills, and we are getting ready to vote on another supplemental Bill here within either this week, or a few days from now, and yet in the emergency appropriations, and then all of the money that they throw into the Omnibus, according to the CRS, we are spending more on defense than all of the other nations in the world combined.

And it seems to me that a lot of it is generated because the defense contractors hire all the retired Admirals and Generals, and then they call it the revolving door at the Pentagon, but I don't

think that we can just keep on wasting and blowing money in the way that we are doing.

But the only question I have—you say, Mr. Thibault, at one point in your testimony, you say that there are a number of new projects in the pipeline, and you mention this \$30 million dining facility—how many, rough guess, how many other new projects are going on or are we talking about?

Mr. THIBAUT. I can't answer that question because that is our immediate action. We are doing the analysis. We know it is \$2 billion. What we want to do is go out and touch those projects to look at them to see if they make sense. That is where you need people in theater. It just happened that this was shared with us when we happened to visit that base. And, there are a couple of hundred bases in Iraq. We visited three or four of them. And there is obviously a need to one, do the analysis, and then two, go out and look at the high dollar items and asks those questions—does this make sense with the drawdown of Iraq?

Mr. DUNCAN. So, do you mean by saying that, that you have only visited three or four, and there are hundreds of bases, so is the \$2 billion just the tip of the iceberg estimate, or is that—

Mr. THIBAUT. No, that is what is in the pipeline as approved construction projects, and it is kind of interesting, this project, this example, of the dining facility right next to it. And they needed to feed 4,000 individuals. They upgraded it because they had a lot of problems with it, the existing one. They spent \$3.6 million, while that had just occurred.

And what happened is the paperwork that showed all of the problems that led to this upgrading the cafeteria and being sure it could serve the proper number never made it over into the planning documents for the new construction. So, they still thought they had this dilapidated dining facility. And, the only thing I can think of, and it is the importance of the chairman, you have to go out and look at it. You have to spend the time in the country because if we hadn't none of that would have come forward. You can't just do an analysis of paperwork because it would have said "dilapidated facility, need to build it," the paperwork would say, "makes sense. Well, it had just been renovated, so we are going to have two great dining facilities."

Mr. GREEN. Well, and then it was also done at a time before the agreement between Iraq and the United States when we would depart. So, as it turns out, we will have this new wonderful dining facility for about 2 years.

Mr. TIERNEY. Is it the same contractor doing both the repair work and the new facility?

Mr. THIBAUT. Yes, sir, in this case.

Mr. TIERNEY. And so, they never spoke up, of course, and said, what are we doing here? Mr. Lynch.

Mr. LYNCH. Thank you, Mr. Chairman. Mr. Shays, I want to welcome you back before the committee.

Mr. SHAYS. Thank you.

Mr. LYNCH. Great to see you. And I thank you all for your great work.

I haven't been over to Iraq as many times as Mr. Shays has, but I am up to around a dozen now. One of my jobs before I came to

Congress, I spent a lot of time on construction sites. I have a construction engineering degree, and I am surprised that we get as much work done in Iraq and Afghanistan given the contract arrangements that we have. I have seen just horror shows.

I have visited a lot of construction sites in Iraq and Afghanistan, and I frankly think that Stuart Bowen, the former Special Inspector General for Iraq Reconstruction, did a fantastic job, but from my visits to Afghanistan, I think that the situation there, and the Inspector General in Afghanistan, is far less able.

VOICE. He is newer?

Mr. LYNCH. His team is newer, but far less able to police the contracting situation there, so I am very apprehensive about our ability to lose money in Afghanistan and to waste it just through incompetence, as well as through fraud.

One of the earliest hearings we had in here back in 2003 and 2004, on Iraq, I asked the Director for the DCAA, the Defense Contracting Audit Agency, I said, how many auditors do you have in Iraq? And he said, we don't have any. And at this point, we are spending billions of dollars there, billions. And I said, well, how does that work then? And he said, well, we are auditing our work and our contracts in Iraq from Alexandria, VA, which explains why—it is reflected in your own report—but explains why we are having such a problem here.

And now, I read, again from the committee's memo, that we have four folks, four individuals, in Afghanistan, and the whole country. We are spending billions of dollars there. We have two at Bagram Air Force Base, and we have two down in Kandahar. And that is it. And if we don't get a handle on that, with boots on the ground, people competent enough to review these contracts, this is criminal. It is criminal. There is nobody who would operate like this in a private basis. If we were spending private corporate dollars, this wouldn't be happening. And I think it is happening only because we are spending taxpayer dollars and people feel that it doesn't have to be audited to that great degree. We are terribly sloppy in Iraq and Afghanistan. We have to tighten up our act.

What do you see is the greatest need in terms of getting some accountability on the ground? We can't continue to operate this way in terms of the contracts going out without tight enough accountability standards, or recognizable standards.

You know, I go on to jobs in Iraq where, just from walking on the job sight, you can see substandard materials. I try to talk to the workers there. I had an Iraqi interpreter with me. It turns out they are all from India. Now, you've got 60 percent unemployment in Iraq. Why the heck are we bringing in foreign workers? God Bless the folks from India, but you ought to put some people from Iraq to work, and it just seems there are no requirements in the contracts that would help the overall cause of putting people to work and stabilizing that country.

But from your own attendance there, and your own observations on the ground, what do you think needs to be done first, and fastest?

Mr. SHAYS. I think the first thing we need to do is to encourage the Department of Defense to make this one of their highest priorities. We have spent in contracting \$103 billion. In Afghanistan,

\$20 billion. In Kuwait, \$18 billion. And in the other countries supporting Iraq and Afghanistan, \$12.7 billion. \$154 billion. And, what we know is, we don't have enough contract office representatives. We don't have enough quality assurance representatives. We don't have enough LOGCAP support officers. We don't have enough people watching the contractors. We have 70 percent of our contracts go to subcontractors.

Our law in this country makes it a requirement that we can only oversee the subcontractor by going through the prime. And so, we have to get the information second hand. I think we need to reexamine that, if 70 percent of the dollars I mentioned are actually going to the subs.

We have another issue and that is if it is Afghan employees or Iraqi employees, we have to deal with those governments. And there are certain protections and hoops that we have to jump. And it would strike me that if we are going to spend our dollars there, that we should have greater ability to oversee the contracts that are done by the indigenous folks paid for by us.

Mr. TIERNEY. Thank you. Thank you, Mr. Lynch. I do note in your report, at one point, you showed an example of cutting right through the prime and going straight to the subcontractor making that person the prime. I mean that is just having a better capacity on our own stand and not have to rely on a contractor, so they don't take a cut. And I think your report indicated in one of the instances the subcontractor had jacked the prices up, and then the prime went out and just doubled it, and then passed it along, so they took all of that off the top. So, I think you are exactly right and I hope that you do continue to look at that aspect and share it with us.

On page 9 of your report, you have a little sidebar that you talk about cracks in Kabul. You have a new Kabul compound, where supposedly the U.S. forces in Afghanistan and headquarters are going to be, where General McChrystal will be sitting, except that he won't because there are structural cracks, improper plumbing, and thus unusable bathrooms, incorrectly sized sewage systems, broken and leaking pipes, sinking sidewalks, and other construction defects.

How does that happen that somebody signs off on a project like that and we end up getting tagged for the bill and having an unusable building on that?

Mr. THIBAUT. One of the recurring themes is accountability. How does that happen? In this particular instance, the U.S. Corps of Engineers, signs off—

Mr. TIERNEY. I am sorry. I can't hear you.

Mr. THIBAUT. In this particular instance, the U.S. Corps of Engineers signed off that this \$18 million contract by a Turkish construction company was adequate. And it is interesting because it talks a little bit to our methodology. When we were over there, we interviewed the senior. He happened to be a Major individual that inherited this building.

Well, actually, you talk about rework. A great example of rework because as these repairs are ongoing, the logistics contractor, and it is essential to do it so they can habitate this, KBR is doing much



of the work that this Turkish company, and they came in and voided the warranty because they came in and approved everything.

Now, the only way you could physically approve it, is to not be physically there because in just this list where we asked for an information paper from the responsible personnel, major issues, septic, electrical, ceiling tiles falling down, 250 missing, fire alarm systems, I mean these are big deals, power generators, kitchen exhausts—

Mr. TIERNEY. Was KBR responsible for managing the work of that Turkish outfit?

Mr. THIBAUT. No, that was a separate contractor.

Mr. TIERNEY. So, the Turkish outfit was the contractor, prime?

Mr. THIBAUT. It was the contractor. Yes, sir. KBR came to the rescue, but that is all rework.

Mr. TIERNEY. So, now do we know whether or not the Army Corps of Engineer official who was responsible for that was ever disciplined?

Mr. THIBAUT. No, we don't, and that is the accountability issue. Somewhere, and that is Commissioner Shay's point I think, we have to start identifying who is responsible.

Mr. TIERNEY. Absolutely.

Mr. THIBAUT. And not just that individual but someone is reviewing and training his workload. And so, I think it goes up a little higher. My suggestion in this process is we have seen military accountability in situations, but we just have not yet seen where these situations occur, someone said why, and if they are inept.

Mr. TIERNEY. I mean I would think that company no longer does business with us, but I fear that they probably do?

Mr. THIBAUT. Oh, they do, sir.

Mr. TIERNEY. And so, that is one of the things you will be investigating as well, is what kind of a process we put in place to make sure that when that happens, they don't do anymore business with us, and that people be held accountable for it.

Are you getting enough access to the information of the people that you need as a Commission, or do you feel that you need the assistance of any committee in Congress? Are people being responsive? Are they being helpful, or are they being obstructionists?

Mr. THIBAUT. I would say that we have had the need to explain in detail sometimes why we need information, but, by and large, the Department of Defense and Department of State have supported us. Where we really are straining is your point about getting into country.

Our first two trips were delayed about a month because of conflicts and schedule. They did it. The trips went off very well, and they supported it, US CENTCOM, but we have a need for four other trips and they are saying, "whoa." And so, we are going to have to find that out. Will they allow us to go in and do this job? Because if we can't go out there and look at the records there, we will fail.

Mr. TIERNEY. Well, it speaks again of your presence in-country, if necessary, but you will work with our committees, and this committee of the Senate, and we will try to help you with that.

Mr. THIBAUT. As soon as we have a delay, yes sir.

Mr. SHAYS. And Mr. Chairman, I would like to say it is very helpful for your encouragement that we be in Iraq and Afghanistan. I remember that the Inspector General of DOD said he didn't need to be there, and your committee made him go. And we benefited from it.

Mr. TIERNEY. But we benefit from it when we go. It is not like we are going there for a vacation. It certainly is not some place we want to be, but you do, I believe, as I think Chairman Thibault mentioned a couple of times, you get to see things that on paper might present themselves entirely differently, and work on that. So, we are conscious of that and we want to work with you to make that happen.

Would you talk a little bit about the challenges where the contractors or the subcontractors are third-country nationals, or host-country nationals, and the problems those present, and what we are going to look into in terms of trying to resolve those issues, those challenges.

Mr. TIEFER. There have been audits which we followed up, as noted, the prime contractor may be KBR, but the work, or the dining facilities that are being run, or the other work that is being done, is done by a third-country company, like First Kuwaiti Trading Co., or Tameme, and the audits there show that those subcontractors may well get away with overcharging because it is not that much in KBR's interest, and it doesn't even have the business systems to create competition under it.

The overcharges from the subcontractor then get passed up with the factor for award fees and the factor for overhead until it comes to the Treasury. The Commission is trying to figure out the legal challenge, and it is a new one. You don't find this as a problem in the domestic United States, but it is a big one in theater where we are and we are trying to look at what could be done to increase the ability to, say, audit such third-country companies.

Mr. SHAYS. Could I just emphasize, so we have the government that is supposed to oversee the contractors, and we have less than half of what we need. They aren't specialists. They have to be taught. And then they are asked to leave sooner than the contractor who is still there. And then we have DCAA point out that most of the technology that the contractors use is outdated, inaccurate, and not helpful, and doesn't provide the right information.

So then, when we want to get the information, we are getting it from the company itself that can't provide really well documented information.

Mr. TIERNEY. Do our contracts not require these contractors to have updated technology with certain specifications that would service our needs?

Mr. SHAYS. They are required to have it, but they don't have it.

Mr. TIERNEY. OK, I just want to make sure, so that is something we will be chasing down. Mr. Flake.

Mr. FLAKE. Thank you. Mr. Thibault, can you cite specific examples of services that can be provided under a different contractor under LOGCAP IV, and why you believe that switching contractors might be able to yield better results?

Mr. THIBAUT. Well, yes, the way the contract is structured now, sir, every task order now is theoretically supposed to be bid out

and evaluated for those three contractors, DynCorp International, Fluor, and KBR. The early results are that is a very good thing for the government in terms of price and costs, that competition. Those are the three organizations now, that is a long-running contract also. The problem is 90-plus percent of the current charges are with the old contract, which is the sole supplier and one of our emphasis. And I will point out that I think it was General Odierno who identified the same issue, which is get on with the competition part of LOGCAP IV, lots of planning, lots of effort, and it is not happening to the extent that it should.

Mr. FLAKE. Thank you. The pace of withdrawal in Iraq, you mentioned in the report some of the challenges that presents us with, what are some of those challenges, the rapid pace of withdrawal that we have? Somebody else want to take that?

Mr. GREEN. Sure. I think that there are a number of factors and CENTCOM is planning for this, whether they have done enough planning, whether that planning is moving at a pace that is going to accommodate the downsizing and the ramp up, we don't know yet.

Mr. FLAKE. But specifically, what opportunities are there for abuse, or fraud, or waste, with rapid withdrawal. What do we have to look after?

Mr. GREEN. Well, I think, as troops are withdrawn from Iraq, as an example, we are probably going to have to rely on contractors to remain there to close down those bases, or to pass them on to the Iraqis.

And one difficulty that was brought to our attention, for example, just shows a lack of planning and a forethought on this is they pulled out the air conditioning units in buildings that were going to be passed to the Iraqis and then had to go back and reinstall them again because they just didn't think enough about when they took the equipment out that it would still be needed because the Iraqis were going to take over that.

But all the decisions on reset, which equipment gets sent back here for rehab, which is going to go to the reserve components, which will be scrapped, which will be turned over to the Iraqis, all of those planning decisions are currently being made by CENTCOM. But again, I am not yet comfortable that there aren't a lot of holes in that planning process.

Mr. THIBAUT. And, I might add, as an example, when we were on one of the bases, the military enlisted person that is going to be involved in some of that support activity kind of pointed over and said look at all of those containers. You know what, I have an open amount. I don't know what is in there. And that is this point, that we accumulated material and now we are going to have to inventory it while the military, it is dwell time, if they are given 90 days to get out of there, they are going to leave in 90 days, but the outcome is contractors are going to go out there and figure out because there could be some very sensitive equipment, so you can't just give it to them.

And so, the important point is, as we see a decline in the military, there is not going to be a proportional decline in the contractors. In fact, it might go the other way depending on the activity. Six hundred thousand line items have to be tracked.

Mr. SHAYS. We all know that we need contractors. We had one contractor for every six military in the Revolutionary War. Now, it is a one for one. The irony is that as we get out of Iraq, we may actually have more contractors than we have military. And we have to dispose of what we call "white property," that is, property in the hands of the contractors, but owned by the U.S. Government. And then, we have items on base that no one knows who is responsible for.

But I would just love to reiterate, to review the list that Commissioner Grant talked about. We can donate it to the Iraqi government. We can return it to the United States, use it elsewhere in Iraq, or move it to Afghanistan, transfer it to other U.S. Government agencies, sell it, and if it has no commercial value, scrap it.

We are asking people to make those decisions, and they may not know what is needed in another base. So, they may decide that we should give away when we are going to still purchase it somewhere else, or bring it from the United States to Afghanistan when it was in Iraq, and we could have gotten it from there.

Mr. FLAKE. So, it just speaks to the need for more coordination and cooperation.

Mr. GREEN. And is it worth it to ship it home. It is simple to say, well, we will give it to the Iraqis. Well, maybe that is the right decision.

To followup on Commissioner Shay's first point, I think we need to think hard, as does this subcommittee, there is an inherent implied concern that we have too many contractors. Whether we do or not, I am not prepared to answer that, and the Joint Staff has, in fact, got a task force looking at what things are appropriate to be contracted out. And it goes to inherently governmental, and those things, but how did we get to this point? And then, what decisions were made by the Services, what decisions were made by OSD, by OMB, and by the Congress that get us to this one to one ratio, or whatever it may be.

But I think more important is what are the options? Do we increase force structure within DOD and State, so that we have not just the contracting oversight expertise, but we have folks to do some of these jobs that are now being done by contractors. Do we change the emphasis within the Services to push more things into the sustainment force, out of the operational force? Do we provide just less services, or less quality services, or do we just accept the fact that this is the way we are going to go to war? And I think those questions we need to focus on, in addition to waste, fraud, and abuse.

Mr. TIERNEY. That was a large part of the formation of this. You know from reading your own charge in the legislation that is a piece of the work that we really very seriously want to have done. Mr. Duncan.

Mr. DUNCAN. Mr. Chairman, just one last comment. I think we have far too many contractors. When I read that we have 240,000 contractors in the two arenas, Afghanistan and Iraq put together, and that 80 percent of them are foreign nationals, it seems to me that this is just a gravy train of money for these defense contractors, No. 1, and for all these contractors, and I think almost anybody in this country, almost any average American, would say that

it is ridiculous, that we are still spending all of this money, hiring all of these foreign nationals, and committing all of the waste, fraud, and abuse, or allowing it to go on over there. And I think it is really sad and it is really shameful, really. Thank you.

Mr. TIERNEY. I think the other question that we asked, or part of that question that we asked, was what is inherently a governmental responsibility and what is not? That is the nub. All right. What are we doing with some of these people? Are they really doing a job that should only be entrusted to somebody that is a U.S. citizen, or a member of the Armed Services, or in some respect responsible up the chain here?

Security strikes me as one of those things. It is very much who is protecting whom within these countries, and that has been something we have had hearings on in the past, but we are looking forward to your in-depth work on that issue to help us inform what are the many definitions of inherently governmental responsibility? Which is the one that we are going to settle on? And then, how are we going to make that determination.

Colonel Green, I agree, nobody has really discussed what is the proper number of contractors out there, and Chris, what you mentioned, the different ratios over time, one to one went up, and then it went down again, and now it is where it is, but the fact of the matter is, at some point the argument that we have heard, when it wasn't really anything we could do about it at this time when different people were running the military in the White House before our day was that it was just cheaper to contract it out. I don't think there is any evidence of that at all, and it certainly would be helpful to have somebody explore that aspect of it, how it could possibly be cheaper when we look at these numbers, and this degree of difficulty that has been going on, the other part of that.

So, we have to get the numbers right. We have to get the assignment of who should be doing what correct. We need to have the right management and oversight in place that gets back to the capacity issue that you are talking about, and report in there, and that will be critical, if you could help us with that?

But in that vein we have people stationed in over a thousand bases all over the world. That is not counting Afghanistan, Iraq, and Kuwait, and all the places servicing those two theaters right now. Over a thousand bases elsewhere that for some reason, we seem just incapable of reviewing and deciding whether in the hell they deserve to be there, they should be there, what is their function, are they really adding on something of value to our national security interests, and what are all of the people that are there doing? Can't you take some of them and train them? Some of them may have technical expertise. Some of them may have the ability to be trained to do certain aspects of it, or whether instead of sitting at some base for a reason that was valid maybe 25 or 30 years ago, but may not be valid today. We will be looking into that issue separately, but I think it is something to note here, prioritize.

The other is the National Guard and the reservists do have expertise, particularly in security and other areas where maybe a better identification of who is in these forces and their deployment will put them in the proper position. They will be easier to train, police officers, and things of that nature for security on that basis.

So, somebody in the management structure of the Department of Defense and State has to be looking at these issues on a much more sophisticated and better way on that. Even the civilian core that we are now developing hopefully will be a help although that is not going to happen as quickly as we want.

Let me just wrap up my questioning on this with the Defense Acquisition University aspect of it. Did anybody think of putting it on a disk, so that you didn't necessarily have to connect when you were doing that, or was it just beyond the Defense University's capacity to conjure?

Mr. THIBAUT. Well, I would propose they probably have it on a disk, but they told the individual to take it on-line, so it is kind of silly if you don't have a set of disks, you can't give them a disk.

Mr. TIERNEY. I mean that would seem a way to get it done and that university to ramp up and get people through on that basis. I am concerned that our contractors are not using the kind of technology that they need to use. It seems to me that a contract enforcement issue, and for all that we are going to hear for apologies for the contractors coming in here and telling us, oh, they are the good guys, all of the stuff about your bad management, they are partially right. These organizations owe it to their own people, the people who are over there giving their lives and being injured as Chairman Thibault said, and to the taxpayers of this country, to do what the contract says, to put the kind of technology in there that has to be put in, so that we can track these things and follow through.

They owe it to us to speak up when they are building a \$30 million place for people to eat, or whatever, and they are also repairing another place and know, or should know, probably better than anybody that is it. That is not funny. It may be profitable, but it is not good. They owe it to the taxpayers of this country to not just double the number coming from somebody else and pass it along, without making note of it. So, there is enough criticism to go around here on that, and they certainly have a portion of it, and that is why we need management oversight.

If we could trust them to do everything on the up and up, we wouldn't be so concerned about it, but when I look at the examples that you have stated, and the others in previous reports, we have a capacity issue. We have to get the management oversight in there, and we have to move forward on that basis.

We have lots that we want to talk to you about over the coming period of time, and we credit you for the work that you have done. The Aegis situation is one, I think is serious import on your report that we will look forward to expanding that out, as you say that you will in your report. But the work that you are doing is, I think, going to be very helpful to us. It is going to help us focus on what we need to do in terms of legislation, or probably more in line with oversight to hold the feet to the fire of the people that are not doing the management work that they should do, and not organizing and planning as they should, or what we need to do to help them do that, if they are not getting that capacity.

Mr. Flake, do you have anything you would like to add before we let this panel go?

Mr. FLAKE. No.

Mr. TIERNEY. OK. We just thank you for your testimony and for your service and the offer remains to work with you, if we can be helpful in having your responsibilities fulfilled. We will take about a 5-minute break before the second panel starts.

[Recess.]

Mr. TIERNEY. The subcommittee will now receive testimony from the second panel before us today. Mr. Alan Chvotkin serves as executive vice president and counsel for the Professional Services Council, where he is responsible for the Association's Federal acquisition, legislative and regulatory policy. Prior to this, Mr. Chvotkin was the vice president of AT&T Government Services. He has held a number of staff positions in the U.S. Senate, including both counsel and staff director on the Senate's Small Business Committee, as well as counsel on the Armed Services Committee.

Mr. Chvotkin holds a J.D. from American University's School of Law.

As you saw from the first panel, Mr. Chvotkin, it is the policy of the committee to swear you in before you testify.

[Witnesses sworn.]

Mr. TIERNEY. Thank you very much. Your full written statement, as noted to the earlier panel as well, will be placed upon the record. We would like to afford you 5 minutes to make your opening remarks before we start the questioning, and I invite you to do so at this time.

**STATEMENT OF ALAN CHVOTKIN, EXECUTIVE VICE PRESIDENT AND COUNSEL, PROFESSIONAL SERVICES COUNCIL, FORMER VICE PRESIDENT, AT&T GOVERNMENT SERVICES**

Mr. CHVOTKIN. Mr. Chairman, Congressman Flake, members of the subcommittee, thank you for your invitation to appear before the subcommittee today.

The Professional Services Council is the leading national trade association of government professional and technical services firms. Our more than 330 member companies represent small, medium, and large businesses that provide Federal agencies with services of all kinds.

Our members employ hundreds of thousands of Americans in all 50 States.

We have been actively engaged in the policy issues relating to the Federal Government's contracting in Iraq since the first days of shock and awe. We testified before the Senate, in fact, before this committee on three separate occasions during the past 4 years, twice at hearings which were chaired by the distinguished vice chairman of the Commission, Mr. Shays, when he was in the House of Representatives.

We submitted comments on relevant legislation, participated extensively in the comprehensive lessons-learned projects conducted by the Special Inspector General for Iraq Reconstruction and the Government Accountability Office, and, in 2005, conducted a formal joint lessons-learned review with the Commanding General of the Army Materiel Command.

We know the commissioners appointed to conduct this review and have had the opportunity to work professionally with many of them during the past. We have worked professionally with many

of the senior commission staff, and each and every individual brings an expertise and a perspective to these important tasks.

We have also had the opportunity to work professionally with many of the key Federal agencies involved in developing the requirements, including the oversight activities and the Special Inspector General for Iraq Reconstruction. We appreciate the challenges that they have faced and the commitments that they have shown to fulfill the government's mission.

We have also been privileged to work with dozens of companies and hundreds of executives from across our membership and our industry that put their companies and their employees on the line every day to further the U.S. Government's missions and objectives. Regrettably, too many members of the military, government civilian employees, and contractor employees, both U.S. citizens, as well as third country nationals, have given their lives in that support.

Mr. Chairman, I can say without fear of contradiction that the issues in Iraq and Afghanistan contracting are among the most complex ever experienced and are interrelated and interdependent among numerous, and often changing, government-directed missions, activities and priorities. While it is possible, and certainly easier, to be selective in the issues chosen for review, the value of any analysis of the current or past government or contractor activities, in Iraq in particular, must take into account several sets of realities.

First, Iraq contracting is not one activity at all. It is really three different subsets: the support of the military and military related activities, second, the reconstruction of Iraq, and third, the economic and developmental assistance provided in Iraq and Afghanistan.

Second, we must look at the timeframes for our nation's efforts in Iraq. The initial military actions through the fall of the Saddam regime presented a very different set of on-the-ground actions from the work undertaken by the Coalition Provisional Authority, and different still from the more recent, rapidly changing, physical security environment and new sets of contracting directives and policies, some initiated by Congress, and undertaken by the Defense Department, the State, CENTCOM, and the Joint Contracting Command for Iraq and Afghanistan.

The final set of realities is what I refer to as situational contracting. To truly understand the nature of the contracting activities in Iraq, it is essential to understand the differences between emergency contracting during heightened military action, contingency contracting during heightened physical security challenges, and the longer-term sustainment contracting that could characterize the situation today. It would be a mistake to select any subset of acquisition regulations that are written for normal contracting and expect procedural perfection when they are applied in a wartime environment.

We have known from almost the outset of the conflict that there were too few trained government acquisition professionals assigned to support the rapidly escalating U.S. operations in Iraq, the significant growth in the number of contracts, and the number of contractor employees deployed into theater. We have known from al-



most the outset of the conflict that many of the contractors that were awarded business in that theater of operation were overwhelmed by the rapidly changing magnitude of the work and the pressures put on their standard business operations while responding to wartime requirements.

But it comes as no surprise to many of us in the private sector, who have been watching and commenting on these activities, and I would hope it would not be a surprise to anyone in government who had responsibility for any part of these, that the lack of contracting officers deployed into the theater, the lack of qualified contracting officer representatives assigned to supervise contractors, the lack of State Department diplomatic security billets, or the lack of government program management or technical skills, that had an impact on the government's ability to execute, manage, and oversee these capabilities.

As we reviewed those elements of the Interim Report that found their way to the public domain prior to today, we were struck by the fact that these examples cited did not, in fact, speak to abuse or fraud. Rather, they spoke to some of the structural challenges that are all too well known. For example, the building of a dining facility at significant cost to the government despite questions as to the need for that base is not a case of contractor or government fraud or misconduct. It may be inefficient. It may be waste, but it is not fraud or misconduct.

Similarly, as the Commission continues its work, we hope that it will use its unique opportunity to set the public record straight on highly publicized, and often tragic events, and to demystify the perceptions that at times overwhelm the facts.

Finally, the Commission has held only two public hearings, and in both cases only government officials were invited to testify. There are, however, numerous other perspectives that must be heard from in order to ensure a balanced and objective review.

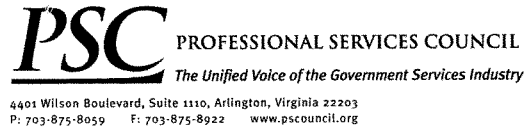
The Professional Services Council stands ready to contribute further to the Commission in any way appropriate, as they do that outreach. In the meantime, the Interim Report should not be treated as a final or conclusive document. Indeed, the need for additional input and discussion for the Final Report is clear and essential.

In addition, we hope the Commission's future hearings, and its Final Report, would address the root cause for these issues, explain the reasons and the implications for such activities, and develop action plans to minimize future occurrences.

Congress should expect no less. The men and women who have already served in Iraq and Afghanistan, and those who will serve there or elsewhere in the future supporting the U.S. Government, deserve no less.

Thank you for the invitation to provide these views. I would be happy to try to answer any questions you may have.

[The prepared statement of Mr. Chvotkin follows:]



STATEMENT OF  
ALAN CHVOTKIN  
EXECUTIVE VICE PRESIDENT AND COUNSEL  
PROFESSIONAL SERVICES COUNCIL  
BEFORE THE  
SUBCOMMITTEE ON NATIONAL SECURITY AND  
FOREIGN AFFAIRS  
COMMITTEE ON OVERSIGHT AND GOVERNMENT  
REFORM  
U.S. HOUSE OF REPRESENTATIVES

JUNE 10, 2009



Mr. Chairman, Ranking Member Flake, and members of the subcommittee, thank you for your invitation to appear before the subcommittee today to discuss the work and the interim report of the congressionally-established, bipartisan, Commission on Wartime Contracting, created by Section 841 of the Fiscal Year 2008 National Defense Authorization Act.

#### Introduction

The Professional Services Council (PSC) is the leading national trade association of the government professional and technical services industry. PSC's more than 330 member companies represent small, medium and large businesses that provide federal agencies with services of all kinds, including information technology, engineering, logistics, facilities management, operations and maintenance, consulting, international development, scientific, social and environmental services, and more. Together, the association's members employ hundreds of thousands of Americans in all fifty states.

Our members also employ thousands of Americans and other nationals supporting the missions of the U.S. government around the globe. Many of our member companies were, or remain, active in Iraq and Afghanistan, supporting the work not only of the Defense and State Departments, but also the Agency for International Development, Environmental Protection Agency, Justice Department and others.

#### PSC Has Been Actively Engaged on Wartime Contracting Issues

We have been actively engaged in the policy issues relating to the federal government's contracting in Iraq since the first days of "shock and awe." Beyond the innumerable internal member company meetings and discussions with federal officials, we testified before the Senate and before this committee on three separate occasions during the past four years—twice at hearings which were chaired by the distinguished Vice Chairman of the Commission, Mr. Shays, when he was in the House of Representatives. We submitted comments on relevant legislation, participated extensively in the comprehensive "lessons learned" projects conducted by the Special Inspector General for Iraq Reconstruction (SIGIR) and the Government Accountability Office, and, in 2005, conducted a formal joint "lessons learned" review with the Commanding General of the Army Materiel Command. We have submitted extensive comments on numerous proposed and interim government-wide Federal Acquisition Regulations and specific agency acquisition regulation supplements issued by the Defense Department, the State Department, and the Agency for International Development. Occasionally, we have filed amicus briefs in the federal courts on important legal policy matters relating to the role of contractors supporting deployed operations. PSC has also met with some of the commissioners on this commission and with its staff over the past several months.

Mr. Chairman, PSC did not support the early initiatives to create the commission because the legislation and the statements of some of the key sponsors left us with the clear impression that the role of the commission was primarily to continue some of the "contractor bashing" that had been the hallmark of several congressional hearings and reviews. Fortunately, the final version of the legislation that passed the Congress and was signed by the president established a broader mission for a comprehensive review of federal agency contracting for reconstruction, logistical support of coalition forces and security functions in Iraq and Afghanistan. The law also directs the commission to assess seven specific topics within these three general tasks.

The statute also directs the commission to submit an interim report on its actions within one year of its formation and to issue a final report within two years of its formation.

We know the commissioners appointed to conduct this review and have had the opportunity to work professionally with many of them in the past. Similarly, we have worked professionally with many of the senior commission staff. Each and every individual brings an expertise and perspective to these significant tasks.

We have also had the opportunity to work professionally with many of the key federal agencies involved in developing the requirements for Iraq and in awarding and monitoring the contracts. We have worked with the oversight activities, including the SIGIR. We appreciate the challenges they have faced and the commitments they have shown to fulfill the government's mission.

We have also been privileged to work with dozens of companies and hundreds of executives from across our membership and industry that put their companies and their employees "on the line" every day to further the U.S. government's missions and objectives. Regrettably, too many members of the military, government civilian employees, and contractor employees—both U.S. citizens as well as third country nationals—have given their lives in that support.

We recognize that there are bad actors in every field, and there are some in federal procurement. Today, dozens of government employees and military personnel are either under indictment or investigation. Likewise, there are contractor employees who have also committed illegal acts. In any set of missions like this, regardless of the presence or lack of contractor personnel, where the needs are urgent and the dollars both massive and rapidly flowing, there will regrettably be abuses. There is no excuse for anyone, be they a member of the military, a government employee, a contractor or a political leader, to intentionally abuse the system; they are responsible for their behaviors and should be held fully accountable for their actions. But overall, there is no question, as evidenced by the several objective reviews, that the vast majority of contractors, government and military personnel have not only acted honorably, but courageously in the execution of this difficult and dangerous missions. And overall, there is no question that our industry, working in partnership with our government customers, is playing an important and positive role in helping government agencies meet their international and domestic missions, while bringing quality jobs to our nation's workforce. That's a "win-win" scenario but one that doesn't often make it into press releases or news stories.

#### Iraq "Realities"

Mr. Chairman, Congress has appropriated over \$800 billion to fund activities in Iraq and Afghanistan. I can say without fear of contradiction that the issues in Iraq and Afghanistan contracting are among the most complex ever experienced and are interrelated and interdependent among numerous (and often changing) government-directed missions, activities and priorities. While it is possible—and certainly easier—to be selective in the issues chosen for review, the value of any analysis of the current or past government or contractor activities, in Iraq in particular, must take into account several sets of "realities."

First, Iraq contracting is not one activity. It must be segmented into three very different subsets: (1) the support of the military and military-related activities; (2) the reconstruction of Iraq; and (3) the economic and developmental assistance provided in Iraq and Afghanistan.

Second, we must look at various timeframes for our nation's efforts in Iraq. The initial military actions through the fall of the Saddam regime presented a very different set of on-the-ground actions from the work undertaken by the Coalition Provisional Authority, and different still from the more recent, rapidly changing, physical security environment and new sets of contracting directives and policies, some initiated by Congress, but undertaken individually by the Defense Department, the State Department, CENTCOM and the Joint Contracting Command (JCC-I/A).

The final set of realities is what I refer to as "situational contracting." To truly understand the nature of the contracting activities in Iraq, it is essential to understand the differences between emergency contracting during heightened military action; "contingency" contracting during heightened physical security challenges; and the longer-term "sustainment" contracting that could characterize the situation today. It would be a mistake to select any subset of acquisition regulations that are written for "normal" contracting and expect procedural perfection when they are applied in a wartime environment.

To the extent that fraud occurred; some government and contractor employees have been successfully prosecuted for that fraud as others are found to have broken the law, they should be prosecuted to the fullest extent of the law. Unquestionably there have been resources—including precious U.S. funds—wasted on projects that were never completed or supplies or services ordered but never used as mission needs have changed.

#### Known Limitations

We have known from almost the outset of the conflict that there were too few trained government acquisition professionals assigned to support the rapidly escalating U.S. operations in Iraq, the significant growth in the number of contracts, and the number of contractor employees deployed into the theater. We have known from almost the outset of the conflict that many of the contractors that were awarded business in that theater of operation were overwhelmed by the rapidly changing magnitude of the work and the pressures put on their "standard" business operations while responding to wartime requirements.

It comes as no surprise to many of us in the private sector, or in the government, who have been watching and commenting on these activities for some time—and I would hope it would not be a surprise to anyone in government who had any responsibility for any part of these activities—that the lack of contracting officers deployed into the theater, the lack of qualified contracting officer representatives assigned to supervise contractors, the lack of State Department diplomatic security billets to provide oversight of non-military security, or the lack of government program management or technical skills, diminished the government's ability to manage and oversee capabilities.

#### Commission's Interim Report

The June 8 *Associated Press* story reporting on the commission's interim report cited a few examples that have occurred in the past twelve months. On the one hand, it is regrettable that

some of the concerns that have existed for years continue to plague the on-going efforts in Iraq and Afghanistan. Other examples cited relate to issues that have been known for some time, but there is no indication whether these activities are continuing or have been (or will be) addressed through government actions taken since the issues were first highlighted.

As we reviewed those elements of the interim report that did find their way into the public domain prior to today, we were struck by the fact that the examples cited did not, in fact, speak to abuse or fraud. Rather, they spoke to the structural challenges that are all too well known. For example, the building of a base at significant cost to the government, despite questions as to the need for that base, is not a case of contractor or government fraud or misconduct. As the commission notes, the base was completed and the work done well. It is only because the government customer failed to issue stop work orders when it became apparent that the requirement no longer existed that this construction is cited as a waste of funds. This is certainly regrettable, but it should not be lumped in with allegations of fraud and abuse. Similarly, as the commission continues its work, we hope that it will use its unique opportunity to set the public record straight on highly publicized—at times tragic—events and demystify the emotions and perceptions that at times overwhelm the facts.

Finally, the Wartime Contracting Commission held only two public hearings, and in both cases only government officials were invited to testify. There are, however, numerous other perspectives that must be heard from in order to ensure a balanced and objective review and report. The commission has identified several additional hearing topics they plan to examine and we hope that they will aggressively seek out a wide range of interests—from both government and the private sector—to present oral and written testimony to the commission. The Professional Services Council stands ready to contribute further to the commission in any way appropriate. In the meantime, the “interim report” should not be treated as a final or conclusive document. Indeed, the need for additional inputs and discussion for the final report is clear and is essential.

In addition, we would hope that the commission’s future hearings, and its final report, would address the root causes for these issues, explain the reasons and the implications for such activities, and develop action plans to minimize future occurrences. Any recommendations presented to and by the commission must be assessed against congressional or administration-directed priorities and actions, against the ability of the government and its contractors to realistically execute those recommendations, and whether a recommendation will result in systemic improvements to the acquisition system for both the current Iraq and Afghanistan operations and for future contingency operations.

Congress should expect no less. The men and women who have already served in Iraq and Afghanistan, and those who will serve there or elsewhere in the future supporting the United States government’s missions, deserve no less.

Thank you for the invitation to provide these views. I would be happy to answer any questions the subcommittee may have.

**STATEMENT REQUIRED BY HOUSE RULES**

In compliance with House Rules and the request of the committee, in the current fiscal year or in the two previous fiscal years, neither I nor the Professional Services Council, a non-profit 501(c)(6) corporation, has received any federal grant, sub-grant, contract or subcontract from any federal agency.

**BIOGRAPHY**

Alan Chvotkin is Executive Vice President and Counsel of the Professional Services Council, the principal national trade association representing the professional and technical services industry. PSC is known for its leadership in the full range of acquisition, procurement, outsourcing and privatization issues.

Mr. Chvotkin joined PSC in November 2001. He draws on his years of government and private sector procurement and business experience to facilitate congressional and executive branch knowledge of and interest in issues facing PSC's membership. Previously, he was the AT&T vice president, large procurements and state and local government markets, responsible for managing key AT&T programs and opportunities. Earlier at AT&T, he was vice president, business management, responsible for the government contracts, pricing, compliance and proposal development organizations. From 1986 to 1995, he was corporate director of government relations and senior counsel at Sundstrand Corporation. Mr. Chvotkin also was a founding member of industry's Acquisition Reform Working Group.

Before joining Sundstrand, Mr. Chvotkin spent more than a dozen years working for the U.S. Senate. He first served as professional staff to the Senate Budget Committee and to the Senate Governmental Affairs Committee. He became counsel and staff director to the Senate Small Business Committee and then counsel to the Senate Armed Services Committee.

He is a member of the Supreme Court, American and District of Columbia Bar Associations. He is also a member of the National Contract Management Association and serves on its national board of advisors and as a "Fellow" of the organization. Alan is also a two-time "Fed 100" winner. He has a law degree from The American University's Washington College of Law, a master's in public administration and a bachelor's in political science.

Mr. TIERNEY. Thank you, Mr. Chvotkin. Mr. Flake, you are recognized.

Mr. FLAKE. Thank you, Mr. Chvotkin. I appreciate the testimony. You heard the last panel. You were present for that. What, if any, areas do you disagree with the recommendations of the panel?

Mr. CHVOTKIN. Well, Mr. Flake, thank you. I have had a chance to look at the report quickly last night. The panel's focus on oversight is appropriate, but I think it misses an important part of the front-end of the process, making sure that there are the resources available to execute the work correctly in the first instance. I support oversight. I think it is an important element of the overall acquisition system, but if we don't have the right people doing the right things at the beginning of the process, we can be assured that the oversight function will find errors and mistakes.

And so, we have been strong proponents for increasing the number of contracting officers and contracting officers' representatives, increasing the amount of program management, bringing the work in Iraq and Afghanistan closer to the theater of operations rather than from Alexandria, or from Rock Island, Illinois. And we think with more resources on the ground at the front end, we will address those issues, some of the issues that the Commission identified as failures in management deficiencies.

Mr. FLAKE. Are there other cases, where fraud is alleged among contractors, but never proven, and if that is the case, what damage is done to the contractor?

Mr. CHVOTKIN. Well, there are many allegations of fraud, certainly allegations of contractor over-billing or mis-charging. Many of them do not prove out to be the case. There, of course, some litigation issues. The Justice Department does not pursue every allegation of fraud. Sometimes, the cases are there. Sometimes, the prosecutorial discretion isn't there.

But, every one of those damages the reputation of the company and, I think, calls into question the functioning of the entire acquisition system. If there is no credibility in the system from the requirements generation, to the contract award, to the oversight, to the contractor's responsibility, if allegations are made that are not sustained simply for the sake of making allegations, then that damage is not only the contractor itself, but the entire acquisition system.

Mr. FLAKE. You mentioned the dining hall facility, and the controversy surrounding that. Apparently, it was the same contractor that was doing the refurbishment, the one who got the same contract for \$30 million to rebuild the facility, or to build the new facility. And the Commission pointed to the lack of coordination and that nobody knew, the contractor, or those overseeing the contract didn't know that any refurbishment had been done, is there some responsibility that falls on the contractor there to say, hey, we are being asked to build the new facility when we have been doing work on the old one? Is there a code of conduct that the contracting community abides by in this case?

Perhaps it is not fraud, but there would seem to be some responsibility there that lies with the contractor who had both contracts.

Mr. CHVOTKIN. Well, I'm not familiar with the specifics of the case. I have read about it for the first time in the Commission's re-



port last night. If it was the same contractor, I would be very surprised, if during the course of that work, the contractor did not at least raise to their supervisor, to the contracting officer, that I am doing similar work. I mean they are on the same base, as I understand it. So, whether they did or not, I would hope that the contractor would take that obligation and initiative to do that.

Many times, because of the rotation assignments, and because of the resources, it is the contractors who have the visibility into the activities of that facility, and I hope they would take that initiative. I intend to ask around and see what I can find out about the contractor. I don't know who it was and the work that they have done, so I don't have any comments about the specifics.

Mr. FLAKE. That would be great if you could forward anything you find to the committee.

Mr. CHVOTKIN. I would be happy to share anything I learn.

Mr. FLAKE. One last question. I know we have votes coming on. I am certain that in many of these cases, where these contracts are not bid out, where they are self-source contracts, that members of your association and community are upset because they would like to bid on these contracts, do you sometimes ask for these J&As, or can you review the material, and in what forum do you have to go to the agency and say, why wasn't this bid out? I am sure those types of situations come up. What kind of remedy do you have to make sure that the agencies abide by their own rules in terms of contracting things out, or bidding things out?

Mr. CHVOTKIN. That is a very important question. In fact, we hear a lot, where there is a lack of competition, our members tell us about that because, as you said, they do welcome the opportunity to compete for work and do compete aggressively. They would much prefer to have sole-source work, but they understand the importance of competition and the importance of a predictable procurement process.

So, when those issues are raised, it is not raised frequently to us, but when they are, we ask that question. Congress, last year, required the Defense Department, when issuing sole-source awards over \$100 million, to make those justifications publicly available, so that process will soon start. The regulations have been recently put into place.

On the history, we don't have access to a lot of the government's decisionmaking, but we do ask the question frequently, why wasn't competition appropriate? Why wasn't it able to be undertaken? And certainly, there are national security reasons. And certainly, there are exigencies in the wartime environment that might prohibit it.

But even dating back to the original U.S. involvement in Iraq, we were strong proponents of phasing-in. If there was a need for a sole source award, because of an emergency situation or to support the troops, that didn't necessarily need to have a 9-year or 10-year, or even a 5-year contract. There could have been a better plan for the competition process. Some of it is resources. Some of it is the changing environment in Iraq and Afghanistan, in particular, but we have been strong proponents of competition and that should be the standard that is applied.

Mr. FLAKE. Thank you, Mr. Chairman.

Mr. TIERNEY. Thank you. Mr. Chvotkin, thank you very much for joining us today and for giving your perspective on this. We are going to close the meeting in time to let the Members vote. We thank you for your time. Thank you for your patience waiting for the first panel. This meeting is adjourned.

[Whereupon, at 11:48 a.m., the subcommittee was adjourned.]

